

S 190 IS

109th CONGRESS

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S. 190

IN THE SENATE OF THE UNITED STATES

January 26, 2005

*Mr. HAGEL (for himself, Mr. SUNUNU, and Mrs. DOLE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs*

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**A BILL**

To address the regulation of secondary mortgage market enterprises, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE- This Act may be cited as the `Federal Housing Enterprise Regulatory Reform Act of 2005'.

(b) TABLE OF CONTENTS- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—REFORM OF REGULATION OF ENTERPRISES**

**Subtitle A—Improvement of Safety and Soundness Supervision**

Sec. 101. Establishment of the Federal Housing Enterprise Regulatory Agency.

Sec. 102. Duties and authorities of Director.

Sec. 103. Federal Housing Enterprise Board.

Sec. 104. Authority to require reports by regulated entities.

Sec. 105. Examiners and accountants; authority to contract for reviews of enterprises.

Sec. 106. Assessments.

Sec. 107. Regulations and orders.

Sec. 108. Prudential management and operations standards.

Sec. 109. Limitation on nonmission-related assets.

Sec. 110. Risk-based capital test for enterprises.

Sec. 111. Limit on golden parachutes.

Sec. 112. Reporting of fraudulent loans.

### **Subtitle B—Improvement of Mission Supervision**

Sec. 121. Transfer of program approval and housing goal oversight.

Sec. 122. Review of enterprise programs, and activities.

Sec. 123. Authority to require reports by enterprises.

Sec. 124. Monitoring and enforcing compliance with housing goals.

Sec. 125. Assumption by director of other HUD responsibilities.

Sec. 126. Administrative and judicial enforcement proceedings.

### **Subtitle C—Prompt Corrective Action**

Sec. 141. Capital classifications.

Sec. 142. Supervisory actions applicable to undercapitalized regulated entities.

Sec. 143. Supervisory actions applicable to significantly undercapitalized regulated entities.

Sec. 144. Authority over critically undercapitalized enterprises.

### **Subtitle D—Enforcement Actions**

Sec. 151. Cease-and-desist proceedings.

Sec. 152. Temporary cease-and-desist proceedings.

Sec. 153. Removal and prohibition authority.

Sec. 154. Enforcement and jurisdiction.

Sec. 155. Civil money penalties.

Sec. 156. Criminal penalty.

Sec. 157. Notice after separation from service.

## **Subtitle E—Other Reporting Regarding Regulated Entities**

Sec. 161. Reporting regarding regulated entities.

## **Subtitle F—General Provisions**

Sec. 171. Conforming and technical amendments.

Sec. 172. Presidentially appointed directors of enterprises.

Sec. 173. Effective date.

## **TITLE II—FEDERAL HOME LOAN BANKS**

Sec. 201. Directors.

Sec. 202. Definitions.

Sec. 203. Agency oversight of Federal Home Loan Banks.

Sec. 204. Debt issuing facility.

Sec. 205. Exclusion from certain securities reporting requirements.

Sec. 206. Limitation on golden parachutes.

## **TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD**

### **Subtitle A—OFHEO**

Sec. 301. Abolishment of OFHEO.

Sec. 302. Continuation and coordination of certain regulations.

Sec. 303. Transfer and rights of employees of OFHEO.

Sec. 304. Transfer of property and facilities.

### **Subtitle B—Federal Housing Finance Board**

Sec. 311. Abolishment of the Federal Housing Finance Board.

Sec. 312. Continuation and coordination of certain regulations.Board.

Sec. 314. Transfer of property and facilities.

## **TITLE IV—MISCELLANEOUS PROVISIONS**

Sec. 401. Study and report on Basel II and enterprise debt.

Sec. 402. Affordable housing reporting.

## SEC. 2. DEFINITIONS.

Section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502) is amended--

(1) in paragraph (5), by striking `Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development' and inserting `Federal Housing Enterprise Regulatory Agency';

(2) in each of paragraphs (8), (9), (10), and (19), by striking `Secretary' each place that term appears and inserting `Director';

(3) in paragraph (14), by striking `Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development' and inserting `Federal Housing Enterprise Regulatory Agency';

(4) by redesignating paragraphs (16) through (19) as paragraphs (21) through (24), respectively;

(5) by striking paragraph (15) and inserting the following:

`(20) REGULATED ENTITY- The term `regulated entity' means--

`(A) the Federal National Mortgage Association and any affiliate thereof;

`(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and

`(C) any Federal Home Loan Bank.';

(6) by striking paragraph (13) and by redesignating paragraphs (7), (8), (9), (10), (11), (12), and (14) as paragraphs (13) through (19), respectively;

(7) by redesignating paragraphs (2) through (4) as paragraphs (5) through (7), respectively;

(8) by inserting after paragraph (7), as redesignated, the following:

`(8) DEFAULT; DANGER OF DEFAULT-

`(A) DEFAULT- The term `default' means, with respect to an enterprise, any adjudication or other official determination by any court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life enterprise, or legal custodian is appointed for an enterprise.

`(B) IN DANGER OF DEFAULT- The term `in danger of default' means an enterprise with respect to which--

`(i) in the opinion of the Agency--

`(I) the enterprise is not likely to be able to pay the obligations of the enterprise in the normal course of business; or

`(II) the enterprise has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

`(ii) there is no reasonable prospect that the capital of the enterprise will be replenished.'.

(9) by redesignating paragraph (1) as paragraph (2);

(10) by inserting after paragraph (2), as redesignated the following:

`(3) AUTHORIZING STATUTES- The term `authorizing statutes' means--

`(A) the Federal National Mortgage Association Charter Act;

`(B) the Federal Home Loan Mortgage Corporation Act; and

`(C) the Federal Home Loan Bank Act.

`(4) BOARD- The term `Board' means the Federal Housing Enterprise Board established under section 1313A.';

(11) by redesignated paragraph (6) as paragraph (10), and by inserting after paragraph (10), as redesignated, the following:

`(11) ENTERPRISE-AFFILIATED PARTY- The term `enterprise-affiliated party' means--

`(A) any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity;

`(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity; and

`(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if--

`(i) the independent contractor knowingly or recklessly participates in--

`(I) any violation of any law or regulation;

`(II) any breach of fiduciary duty; or

`(III) any unsafe or unsound practice; and

`(ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and

`(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity.';

(12) by inserting before paragraph (2), as redesignated, the following:

`(1) AGENCY; DIRECTOR- The term--

`(A) `Agency' means the Federal Housing Enterprise Regulatory Agency established under section 1311; and

`(B) `Director' means the Director of the Agency, appointed under section 1312.'; and

(13) by adding at the end the following:

`(25) VIOLATION- The term `violation' includes any action (alone or in combination with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.'.

## TITLE I--REFORM OF REGULATION OF ENTERPRISES

### Subtitle A--Improvement of Safety and Soundness Supervision

#### SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING ENTERPRISE REGULATORY AGENCY.

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1311 and 1312 and inserting the following:

#### `SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING ENTERPRISE REGULATORY AGENCY.

`(a) ESTABLISHMENT- There is established the Federal Housing Enterprise Regulatory Agency, which shall be an independent agency of the Federal Government.

`(b) GENERAL SUPERVISORY AND REGULATORY AUTHORITY-

`(1) IN GENERAL- Each regulated entity shall, to the extent provided in this title, be subject to the supervision and regulation of the Agency.

`(2) AUTHORITY OVER FANNIE MAE AND FREDDIE MAC, THE FEDERAL HOME LOAN BANKS, AND THE FEDERAL HOME LOAN BANK FINANCE CORPORATION- The Director shall have general regulatory authority over each regulated entity and the Federal Home Loan Bank Finance Corporation, and shall exercise such general regulatory authority, including such duties and authorities set forth under section 1313 of this Act, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out.

`(c) SAVINGS PROVISION- The authority of the Director to take actions under subtitles B and C shall not in any way limit the general supervisory and regulatory authority granted to the Director under subsection (b).

## SEC. 1312. DIRECTOR.

(a) ESTABLISHMENT OF POSITION- There is established the position of the Director of the Agency, who shall be the head of the Agency.

(b) APPOINTMENT; TERM-

(1) APPOINTMENT- The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of capital markets, including the mortgage securities markets and housing finance.

(2) TERM- The Director shall be appointed for a term of 6 years, unless removed before the end of such term for cause by the President.

(3) VACANCY- A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under paragraph (1), and the Director appointed to fill such vacancy shall be appointed only for the remainder of such term.

(4) SERVICE AFTER END OF TERM- An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

(5) TRANSITIONAL PROVISION- Notwithstanding paragraphs (1) and (2), the person serving as the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development on the date of enactment of the Federal Housing Enterprise Regulatory Reform Act of 2005, shall serve as the Director until a successor has been appointed under paragraph (1).

(c) DEPUTY DIRECTOR OF THE DIVISION OF ENTERPRISE REGULATION-

(1) IN GENERAL- The Agency shall have a Deputy Director of the Division of Enterprise Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage securities markets and housing finance.

(2) FUNCTIONS- The Deputy Director of the Division of Enterprise Regulation shall have such functions, powers, and duties with respect to the oversight of the enterprises as the Director shall prescribe.

(d) DEPUTY DIRECTOR OF THE DIVISION OF FEDERAL HOME LOAN BANK REGULATION-

(1) IN GENERAL- The Agency shall have a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall be designated by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of the Federal Home Loan Bank System and housing finance.

`(2) FUNCTIONS- The Deputy Director of the Division of Federal Home Loan Bank Regulation shall have such functions, powers, and duties with respect to the oversight of the Federal Home Loan Banks as the Director shall prescribe.

`(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND GOALS-

`(1) IN GENERAL- The Agency shall have a Deputy Director for Housing Mission and Goals, who shall be designated by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance.

`(2) FUNCTIONS- The Deputy Director for Housing Mission and Goals shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises as the Director shall prescribe.

`(f) ACTING DIRECTOR- In the event of the death, resignation, sickness, or absence of the Director, the Board shall, by a majority vote, designate either the Deputy Director of the Division of Enterprise Regulation, the Deputy Director of the Division of Federal Home Loan Bank Regulation, or the Deputy Director for Housing Mission and Goals, to serve as acting Director until the return of the Director, or the appointment of a successor pursuant to subsection (b).

`(g) LIMITATIONS- The Director and each of the Deputy Directors may not--

`(1) have any direct or indirect financial interest in any regulated entity or enterprise-affiliated party;

`(2) hold any office, position, or employment in any regulated entity or enterprise-affiliated party; or

`(3) have served as an executive officer or director of any regulated entity, or enterprise-affiliated party, at any time during the 3-year period ending on the date of appointment of such individual as Director or Deputy Director.'

## **SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.**

(a) IN GENERAL- Section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4513) is amended to read as follows:

## **`SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.**

`(a) DUTIES-

`(1) PRINCIPAL DUTIES- The principal duties of the Director shall be--

`(A) to oversee the prudential operations of each regulated entity, on a consolidated basis; and

`(B) to ensure that--

`(i) each regulated entity operates in a safe and sound manner, including

maintenance of adequate capital and internal controls;

`(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets (including activities relating to mortgages on housing for low- and moderate- income families involving a reasonable economic return that may be less than the return earned on other activities);

`(iii) each regulated entity complies with this title and the rules, regulations, guidelines, and orders issued under this title and the authorizing statutes;

`(iv) each regulated entity carries out its statutory mission only through activities that are authorized under and consistent with this title and the authorizing statutes;

`(v) the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest; and

`(vi) each regulated entity remains adequately capitalized, after due consideration of the risk to such regulated entity.

`(2) SCOPE OF AUTHORITY- The authority of the Director shall include the authority--

`(A) to review and, if warranted based on the principal duties described in paragraph (1), reject any acquisition or transfer of a controlling interest in an enterprise; and

`(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

`(b) DELEGATION OF AUTHORITY- The Director may delegate to officers and employees of the Agency any of the functions, powers, or duties of the Director, as the Director considers appropriate.

`(c) LITIGATION AUTHORITY-

`(1) IN GENERAL- In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys.

`(2) SUBJECT TO SUIT- Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity with respect to any matter under this title or any other applicable provision of law, rule, order, or regulation under this title, in the United States district court for the judicial district in which the regulated entity has its principal place of business, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.'

(b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS- Section 111 of Public Law 93-495 (12 U.S.C. 250) is amended by striking 'the Federal Housing Finance Board' and inserting 'the Director of the Federal Housing Enterprise Regulatory Agency'.

### **SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.**

(a) IN GENERAL- The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by inserting after section 1313 the following:

#### **SEC. 1313A. FEDERAL HOUSING ENTERPRISE BOARD.**

(a) IN GENERAL- There is established the Federal Housing Enterprise Board.

(b) DUTIES- The Board shall advise the Director with respect to overall strategies and policies in carrying out the duties of the Director under this title. Except as otherwise provided under this Act, the Board shall not exercise any executive authority.

(c) COMPOSITION- The Board shall be comprised of 4 members, of whom--

(1) 1 member shall be the Secretary of the Treasury;

(2) 1 member shall be the Secretary of Housing and Urban Development;

(3) 1 member shall be the Chairman of the Securities and Exchange Commission; and

(4) 1 member shall be the Director, who shall serve as the Chairperson of the Board.

(d) MEETINGS-

(1) IN GENERAL- The Board shall meet upon notice by the Director, but in no event shall the Board meet less frequently than once every 3 months.

(2) SPECIAL MEETINGS- Either the Secretary of the Treasury, the Secretary of Housing and Urban Development, or the Chairman of the Securities and Exchange Commission may, upon giving written notice to the Director, require a special meeting of the Board.

(e) TESTIMONY- On an annual basis, the Board shall testify before Congress regarding--

(1) the safety and soundness of the regulated entities;

(2) any material deficiencies in the conduct of the operations of the regulated entities;

(3) the overall operational status of the regulated entities;

(4) an evaluation of the performance of the regulated entities in carrying out their respective missions;

(5) operations, resources, and performance of the Agency; and

(6) such other matters relating to the Agency and its fulfillment of its mission, as the Board

determines appropriate.'.

(b) ANNUAL REPORT OF THE DIRECTOR- Section 1319B(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4521 (a)) is amended--

(1) in paragraph (3), by striking `; and' and inserting a semicolon;

(2) in paragraph (4), by striking the period at the end and inserting `; and'; and

(3) by inserting after paragraph (4) the following:

`(5) the assessment of the Board or any of its members with respect to--

`(A) the safety and soundness of the regulated entities;

`(B) any material deficiencies in the conduct of the operations of the regulated entities;

`(C) the overall operational status of the regulated entities; and

`(D) an evaluation of the performance of the regulated entities in carrying out their respective missions;

`(6) operations, resources, and performance of the Agency; and

`(7) such other matters relating to the Agency and its fulfillment of its mission.'.

## **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGULATED ENTITIES.**

Section 1314 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4514) is amended--

(1) in the section heading, by striking `enterprises' and inserting `regulated entities';

(2) by striking `an enterprise' each place that term appears and inserting `a regulated entity';

(3) by striking `the enterprise' and inserting `the regulated entity'; and

(4) in subsection (a)--

(A) in the subsection heading, by striking `SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION' and inserting `REGULAR AND SPECIAL REPORTS';

(B) in paragraph (1)--

(i) by striking the paragraph heading (i) and inserting the following:

`(1) REGULAR REPORTS- '; and

(ii) by striking `reports of financial condition and operations' and inserting

regular reports, including financial statements determined on a fair value basis, on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate'; and

(C) in paragraph (2), by striking 'whenever' and inserting 'on any of the topics specified in paragraph (1) or any other relevant topics, if'.

## **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO CONTRACT FOR REVIEWS OF REGULATED ENTITIES.**

(a) IN GENERAL- Section 1317 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517) is amended--

(1) in subsection (a), by striking 'enterprise' each place that term appears and inserting 'regulated entity';

(2) in subsection (b), by striking 'an enterprise' and inserting 'a regulated entity';

(3) in subsection (c), in the second sentence, by inserting before the period 'to conduct examinations under this section';

(4) by redesignating subsections (d) through (f) as (e) through (g); and

(5) by inserting after subsection (c) the following:

(d) INSPECTOR GENERAL- There shall be within the Agency an Inspector General, who shall be appointed in accordance with section 3(a) of the Inspector General Act of 1978.'

(b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNTANTS, ECONOMISTS, AND EXAMINERS- Section 1317 of the Housing and Community Development Act of 1992 (12 U.S.C. 4517) is amended by adding at the end the following:

(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS, AND EXAMINERS-

(1) APPLICABILITY- This section shall apply with respect to any position of examiner, accountant, economist, and specialist in financial markets and in technology at the Agency, with respect to supervision and regulation of the enterprises, that is in the competitive service.

(2) APPOINTMENT AUTHORITY- The Director may appoint candidates to any position described in paragraph (1)--

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.'

(c) AMENDMENTS TO INSPECTOR GENERAL ACT- Section 11 of the Inspector General Act of 1978 (5 U.S.C. 11 App.) is amended--

(1) in paragraph (1), by inserting ` , the Director of the Federal Housing Enterprises Regulatory Agency' after `Social Security Administration'; and

(2) in paragraph (2), by inserting ` , the Federal Housing Enterprises Regulatory Agency' after `Social Security Administration'.

(d) AUTHORITY TO CONTRACT FOR REVIEWS OF REGULATED ENTITIES- Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended in the section heading, by striking `by rating organization'.

## SEC. 106. ASSESSMENTS.

Section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4516) is amended--

(1) by striking subsection (a) and inserting the following:

`(a) ANNUAL ASSESSMENTS- The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Agency, including--

`(1) the expenses of any examinations under section 1317;

`(2) the expenses of obtaining any reviews and credit assessments under section 1319; and

`(3) such amounts in excess of actual expenses for any given fiscal year, as deemed necessary by the Director to maintain working capital.';

(2) by striking `an enterprise' each place that term appears and inserting `a regulated entity';

(3) by striking `enterprise' each place that term appears (other than as described in paragraph (1)), except in subparagraphs (A) and (B) of subsection (b)(3), and inserting `regulated entity';

(4) in subsection (b)--

(A) in paragraph (2), by moving the margin 2 ems to the left; and

(B) in paragraph (3)(B), by striking `by the enterprise' and inserting `by an enterprise';

(5) in subsection (c), by adding at the end the following: `The Director may adjust the amounts of any semiannual assessments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as the Director determines necessary to ensure that the costs of enforcement activities under subtitles B and C for an enterprise are borne only by that regulated entity.';

(6) in subsection (d), by striking `If' and inserting `Except with respect to amounts collected pursuant to subsection (a)(3), if';

(7) by striking subsection (e) and inserting the following:

“(e) REMISSION OF ASSESSMENT- At the end of each year for which an assessment under this section is made, the Director shall remit to each regulated entity any amount of an assessment collected from the regulated entity that is attributable to subsection (a)(3), and is in excess of the amount that the Director deems necessary to maintain working capital.”;

(8) by striking subsection (f) and inserting the following:

“(f) NO APPROPRIATED FUNDS- Salaries of the Director and other employees of the Agency, and all other expenses thereof, may be paid from assessments collected under this subsection or other sources, and shall not be construed to be Government funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or any other authority.”;

(9) in subsection (g)–

(A) by striking “the Secretary and” each place that term appears; and

(B) in paragraph (3)–

(i) by striking “(A)”;

(ii) by striking “, and (B)” and all that follows through the end of the paragraph and inserting a period; and

(10) by adding at the end the following:

“(h) PAYMENT OF EXPENSES-

“(1) HOME LOAN BANKS- The expenses for performing examination, regulation, supervision, and enforcement functions of the Federal Home Loan Banks by the Director, or any other agency, shall not be paid from any assessments collected by the Director from the enterprises.

“(2) ENTERPRISES- The expenses for performing examination, regulation, supervision, and enforcement function of the enterprises by the Director, or any other agency, shall not be paid from any assessments collected by the Director from the Federal Home Loan Banks.”.

## **SEC. 107. REGULATIONS AND ORDERS.**

(a) AUTHORITY- Section 1319G of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4526) is amended–

(1) by striking subsection (a) and inserting the following:

“(a) AUTHORITY- The Director shall issue any regulations, guidelines, directives, or orders necessary to carry out the duties of the Director under this title or the authorizing statutes, and to ensure that the purposes of this title and the authorizing statutes are accomplished.”; and

(2) in subsection (c), by striking `Committee on Banking, Finance and Urban Affairs' and inserting `Committee on Financial Services'.

(b) CLARIFICATION OF MISSION- Part 1 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by adding after section 1319H, as added by this Act, the following:

#### **`SEC. 1319I. CLARIFICATION OF MISSION.**

`(a) LOAN ORIGINATION- The Director shall prescribe a regulation defining what activities constitute loan origination and are, therefore, impermissible for the enterprises. The regulation shall clarify that loan origination is impermissible to the enterprises whether done directly or indirectly.

`(b) DEFINING THE BOUNDARY- The Director shall prescribe regulations defining the boundary between the primary mortgage market, in which the enterprises are not permitted to participate directly or indirectly, and the secondary mortgage market, in which the enterprises are permitted to operate. Such regulations shall make clear that-

`(1) the secondary market operations can only involve a mortgage loan after it has been closed and funded;

`(2) primary market activities include any activities that involve direct contact with a mortgage borrower, before or after the loan closes, except that an enterprise may make direct contact with a borrower whose loan that enterprise currently owns or guarantees when that loan has defaulted or is in imminent danger of defaulting;

`(3) underwriting a loan for origination, directly or indirectly, is a primary market activity; and

`(4) document and custodial functions are primary market activities, and therefore impermissible to the enterprises, until the purchase of the related loan in the secondary market.

`(c) DEADLINE- The Director shall prescribe regulations required by this section in accordance with applicable requirements of title 5, United States Code, and shall issue them in final form not later than 18 months after the date of enactment of this section.

`(d) NO GRANDFATHERING- No activity or investment of an enterprise shall be presumed permissible because it occurred or was occurring on the date of enactment of this section. The Director shall use reasonable procedures to address any such activity or investment.'

#### **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.**

Part 1 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by inserting after section 1313 the following new section:

#### **`SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.**

^ The Director may establish standards, by regulation, order, or guideline, for each enterprise relating to--

- ^ (1) adequacy of internal controls and information systems taking into account the nature and scale of business operations;
- ^ (2) independence and adequacy of internal audit systems;
- ^ (3) management of interest rate risk exposure;
- ^ (4) management of market risk, including standards that provide for systems that accurately measure, monitor, and control market risks and, as warranted, that establish limitations on market risk;
- ^ (5) adequacy and maintenance of liquidity and reserves;
- ^ (6) management of asset and investment portfolio growth;
- ^ (7) investments and acquisitions of assets by an enterprise, to ensure that they are consistent with the purposes of this title and the authorizing statutes;
- ^ (8) overall risk management processes, including adequacy of oversight by senior management and the board of directors and of processes and policies to identify, measure, monitor, and control material risks, including reputational risks, and for adequate, well-tested business resumption plans for all major systems with remote site facilities to protect against disruptive events; and
- ^ (9) such other operational and management standards as the Director determines to be appropriate.'

## **SEC. 109. LIMITATION ON NONMISSION-RELATED ASSETS.**

Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended--

(1) by striking the subtitle designation and heading and inserting the following:

**^ Subtitle B--Required Capital Levels for Enterprises, Special Enforcement Powers, and Limitation on Nonmission-Related Assets';**

and

(2) by adding at the end the following:

## **^ SEC. 1369E. LIMITATION ON ^NONMISSION-RELATED ASSETS.**

^ (a) IN GENERAL- The Director may, by regulation, determine the type and amount of nonmission-related assets that an enterprise may hold at any time. The Director shall, in any such regulation, define the term ^nonmission-related asset' for purposes of this section.

^(b) RULE OF CONSTRUCTION- Subsection (a) may not be construed to authorize an enterprise to engage in any new program relating to any nonmission-related asset without obtaining the prior approval of the Director in accordance with section 1319H.'

## **SEC. 110. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

(a) RISK CAPITAL LEVELS- Section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) is amended to read as follows:

### **^SEC. 1361. RISK-BASED CAPITAL LEVELS.**

^(a) IN GENERAL- The Director shall, by regulation, establish risk-based capital requirements for each of the regulated entities to ensure that the regulated entities operate in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of each regulated entity.

^(b) Required Registration Under the Securities Exchange Act of 1934-

^(1) IN GENERAL- Each regulated entity shall register at least one class of the capital stock of such regulated entity, and maintain such registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

^(2) ENTERPRISES- Each enterprise shall comply with sections 14 and 16 of the Securities Exchange Act of 1934.

^(c) NO LIMITATION- Nothing in this section shall limit the authority of the Director to require other reports or undertakings in furtherance of the responsibilities of the Director under this Act.'

(b) MINIMUM CAPITAL LEVELS FOR ENTERPRISES- Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612) is amended--

(1) in the section heading, by inserting '^for enterprises' after '^levels'; and

(2) by striking subsection (b) and inserting the following:

^(b) REGULATORY DISCRETION- The Director may, by regulation, establish a minimum capital level that is higher than the level specified in subsection (a).'

## **SEC. 111. LIMIT ON GOLDEN PARACHUTES.**

Section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518) is amended by adding at the end the following:

^(c) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO AFFILIATED PARTIES-

^(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS- The Agency may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) FACTORS TO BE TAKEN INTO ACCOUNT- The Agency shall prescribe, by regulation, the factors to be considered by the Agency in taking any action pursuant to paragraph (1), which may include such factors as--

`(A) whether there is a reasonable basis to believe that the affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the enterprise that has had a material affect on the financial condition of the enterprise;

`(B) whether there is a reasonable basis to believe that the affiliated party is substantially responsible for the insolvency of the enterprise, the appointment of a conservator or receiver for the enterprise, or the enterprise's troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

`(C) whether there is a reasonable basis to believe that the affiliated party has materially violated any applicable Federal or State law or regulation that has had a material affect on the financial condition of the enterprise;

`(D) whether the affiliated party was in a position of managerial or fiduciary responsibility; and

`(E) the length of time the party was affiliated with the enterprise, and the degree to which--

`(i) the payment reasonably reflects compensation earned over the period of employment; and

`(ii) the compensation involved represents a reasonable payment for services rendered.

`(3) CERTAIN PAYMENTS PROHIBITED- No enterprise may prepay the salary or any liability or legal expense of any affiliated party if such payment is made--

`(A) in contemplation of the insolvency of such enterprise, or after the commission of an act of insolvency; and

`(B) with a view to, or has the result of--

`(i) preventing the proper application of the assets of the enterprise to creditors;  
or

`(ii) preferring one creditor over another.

`(4) GOLDEN PARACHUTE PAYMENT DEFINED- For purposes of this subsection--

`(A) IN GENERAL- The term 'golden parachute payment' means any payment (or any agreement to make any payment) in the nature of compensation by any enterprise for the benefit of any affiliated party pursuant to an obligation of such enterprise that--

`(i) is contingent on the termination of such party's affiliation with the enterprise;

and

^(ii) is received on or after the date on which--

^(I) the enterprise became insolvent;

^(II) any conservator or receiver is appointed for such enterprise; or

^(III) the Agency determines that the enterprise is in a troubled condition (as defined in the regulations of the Agency).

^(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT- Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

^(C) CERTAIN PAYMENTS NOT INCLUDED- The term 'golden parachute payment' shall not include--

^(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

^(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

^(iii) any payment made by reason of the death or disability of an affiliated party.

^(5) OTHER DEFINITIONS- For purposes of this subsection--

^(A) INDEMNIFICATION PAYMENT- Subject to paragraph (6), the term 'indemnification payment' means any payment (or any agreement to make any payment) by any enterprise for the benefit of any person who is or was an affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person--

^(i) is assessed a civil money penalty;

^(ii) is removed or prohibited from participating in conduct of the affairs of the enterprise; or

^(iii) is required to take any affirmative action to correct certain conditions resulting from violations or practices, by order of the Agency.

^(B) LIABILITY OR LEGAL EXPENSE- The term 'liability or legal expense' means--

^(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

^(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

^(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

^(C) PAYMENT- The term 'payment' includes--

^(i) any direct or indirect transfer of any funds or any asset; and

^(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on--

^(I) the determination, after such date, of the liability for the payment of such amount; or

^(II) the liquidation, after such date, of the amount of such payment.

^(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT- No provision of this subsection shall be construed as prohibiting any enterprise from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the enterprise which is described in paragraph (5)(A).'

## **SEC. 112. REPORTING OF FRAUDULENT LOANS.**

Subtitle C of part 1 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.), as amended by this Act, is amended by adding at the end the following:

## **^SEC. 1379E. REPORTING OF FRAUDULENT LOANS.**

^The Director shall, by regulation, require the regulated entities to timely report to the Director when the regulated entity discovers it has purchased or sold a fraudulent loan.'

### **Subtitle B--Improvement of Mission Supervision**

## **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUSING GOAL OVERSIGHT.**

Part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amended--

(1) by striking the heading for the part and inserting the following:

## ***^PART 2--PROGRAM APPROVAL BY THE DIRECTOR AND ESTABLISHMENT OF HOUSING GOALS';***

and

(2) by striking sections 1321 and 1322.

## **SEC. 122. REVIEW OF ENTERPRISE PROGRAMS.**

Part 1 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is amended by adding at the end the following:

### **SEC. 1319J. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.**

(a) IN GENERAL- The Director shall have authority to review the appropriateness and permissibility of any enterprise activities to assure their conformance with the purposes of this title and with the purposes of the Federal Home Loan Mortgage Corporation Act and the Federal National Mortgage Association Charter Act, and to protect the safety and soundness of the enterprises. The Director may require written applications before an activity is, or before certain types of activities are, commenced. It may review any activity after an enterprise has commenced it. The Director may prohibit or limit any activity that it determines to be inappropriate or impermissible under this section.

(b) NOTICE OF NEW ACTIVITY- An enterprise that commences any business product or activity under this section shall provide written notice to the Director of the business product or activity not later than 30 days prior to the commencement of such business product or activity.

(c) NO LIMITATION- Nothing in this section shall be deemed to restrict the safety and soundness authority of the Director over all new and existing programs, products, or activities.'

## **SEC. 123. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.**

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1327 and 1328.

## **SEC. 124. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.**

Section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4566) is amended--

(1) by striking 'Secretary' each place that term appears and inserting 'Director'; and

(2) in subsection (a)(1), by striking 'established' and all that follows through '1334' and inserting 'under this subpart'.

## **SEC. 125. ASSUMPTION BY DIRECTOR OF OTHER HUD RESPONSIBILITIES.**

(a) IN GENERAL- Part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is amended--

(1) by striking `Secretary' each place that term appears and inserting `Director' in each of--

(A) sections 1323, 1324, and 1326;

(B) subsections (a), (b), and (c) of section 1331 (12 U.S.C. 4561);

(C) subsections (a), (b), and (c) of section 1332 (12 U.S.C. 4562);

(D) subsections (a), (b), and (c) of section 1333 (12 U.S.C. 4563);

(E) subsections (a), (b), and (c) of section 1334 (12 U.S.C. 4564); and

(F) subsections (a), (b), and (c) of section 1336 (12 U.S.C. 4566);

(2) in section 1332 (12 U.S.C. 4562), by striking subsection (d);

(3) in section 1333 (12 U.S.C. 4563), by striking subsection (d);

(4) in section 1334 (12 U.S.C. 4564), by striking subsection (d);

(5) by striking sections 1337 and 1338 (12 U.S.C. 4567, 4562 note); and

(6) by striking section 1349 (12 U.S.C. 4589).

(b) RETENTION OF FAIR HOUSING RESPONSIBILITIES- Section 1325 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4545) is amended, in the matter preceding paragraph (1), by inserting `of Housing and Urban Development' after `The Secretary'.

## **SEC. 126. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.**

Subpart C of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4581 et seq.) is amended by striking `Secretary' each place that term appears and inserting `Director,' in each of--

(1) section 1341 (12 U.S.C. 4581);

(2) section 1342 (12 U.S.C. 4582);

(3) section 1343 (12 U.S.C. 4583);

(4) section 1344 (12 U.S.C. 4584);

(5) section 1345 (12 U.S.C. 4585);

(6) section 1346 (12 U.S.C. 4586);

(7) section 1347 (12 U.S.C. 4587); and

(8) section 1348 (12 U.S.C. 4588).

## Subtitle C—Prompt Corrective Action

### SEC. 141. CAPITAL CLASSIFICATIONS.

Section 1364 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4614) is amended—

(1) by striking subsection (b) and inserting the following:

“(b) DISCRETIONARY CLASSIFICATION-

“(1) GROUNDS FOR RECLASSIFICATION- The Director may reclassify a regulated entity under paragraph (2) if—

“(A) at any time, the Director determines in writing that a regulated entity is engaging in conduct that could result in a rapid depletion of core capital, or that the value of the property subject to mortgages held or securitized by the regulated entity, or the value of collateral pledged as security, has decreased significantly;

“(B) after notice and an opportunity for hearing, the Director determines that a regulated entity is in an unsafe or unsound condition; or

“(C) pursuant to section 1371(b), the Director determines that a regulated entity is engaging in an unsafe or unsound practice.

“(2) RECLASSIFICATION- In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1), the Director may reclassify a regulated entity—

“(A) as ‘undercapitalized’, if the regulated entity is otherwise classified as adequately capitalized;

“(B) as ‘significantly undercapitalized’, if the regulated entity is otherwise classified as undercapitalized; and

“(C) as ‘critically undercapitalized’, if the regulated entity is otherwise classified as significantly undercapitalized.’;

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

“(d) RESTRICTION ON CAPITAL DISTRIBUTIONS-

“(1) IN GENERAL- A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

“(2) EXCEPTION- Notwithstanding paragraph (1), the Director may permit a regulated entity to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the

repurchase, redemption, retirement, or other acquisition--

`(A) is made in connection with the issuance of additional shares or obligations of the regulated entity in at least an equivalent amount; and

`(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the regulated entity.'.

## **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.**

Section 1365 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4615) is amended--

(1) by striking `the enterprise' each place that term appears and inserting `the regulated entity';

(2) by striking `An enterprise' each place that term appears and inserting `A regulated entity';

(3) by striking `an enterprise' each place that term appears and inserting `a regulated entity';

(4) in subsection (a)--

(A) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

`(1) REQUIRED MONITORING- The Director shall--

`(A) closely monitor the condition of any undercapitalized regulated entity;

`(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed on an undercapitalized regulated entity under this section; and

`(C) periodically review the plan, restrictions, and requirements applicable to an undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.'; and

(C) by adding at the end the following:

`(4) RESTRICTION OF ASSET GROWTH- An undercapitalized regulated entity shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless--

`(A) the Director has accepted the capital restoration plan of the regulated entity;

`(B) any increase in total assets is consistent with the capital restoration plan; and

`(C) the ratio of tangible equity to assets of the regulated entity increases during the

calendar quarter at a rate sufficient to enable the enterprise to become adequately capitalized within a reasonable time.

“(5) PRIOR APPROVAL OF ACQUISITIONS AND NEW ACTIVITIES- An undercapitalized regulated entity shall not, directly or indirectly, acquire

any interest in any entity or engage in any new activity, unless--

“(A) the Director has accepted the capital restoration plan of the regulated entity, the regulated entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

“(B) the Director determines that the proposed action will further the purpose of this subtitle.”;

(5) in subsection (b)--

(A) in the subsection heading, by striking “DISCRETIONARY”;

(B) in the matter preceding paragraph (1), by striking “may” and inserting “shall”; and

(C) in paragraph (2)--

(i) by striking “make, in good faith, reasonable efforts necessary to”; and

(ii) by striking the period at the end and inserting “in any material respect.”; and

(6) by striking subsection (c) and inserting the following:

“(c) OTHER DISCRETIONARY SAFEGUARDS- The Director may take, with respect to an undercapitalized regulated entity, any of the actions authorized to be taken under section 1366 with respect to a significantly undercapitalized regulated entity, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.”.

## **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.**

Section 1366 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4616) is amended--

(1) by striking “the enterprise” each place that term appears and inserting “the regulated entity”;

(2) by striking “An enterprise” each place that term appears and inserting “A regulated entity”;

(3) by striking “an enterprise” each place that term appears and inserting “a regulated entity”;

(4) in subsection (b)--

(A) in the subsection heading, by striking `DISCRETIONARY SUPERVISORY ACTIONS' and inserting `SPECIFIC ACTIONS';

(B) in the matter preceding paragraph (1), by striking `may, at any time, take any' and inserting `shall carry out this section by taking, at any time, 1 or more';

(C) by striking paragraph (6);

(D) by redesignating paragraph (5) as paragraph (6);

(E) by inserting after paragraph (4) the following:

`(5) IMPROVEMENT OF MANAGEMENT- Take 1 or more of the following actions:

`(A) NEW ELECTION OF BOARD- Order a new election for the board of directors of the regulated entity.

`(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS- Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the date on which the regulated entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the enforcement powers of the Director under section 1377.

`(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS- Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).'; and

(F) by adding at the end the following:

`(8) OTHER ACTION- Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.';

(5) by redesignating subsection (c) as subsection (d); and

(6) by inserting after subsection (b) the following:

`(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS- A regulated entity that is classified as significantly undercapitalized in accordance with section 1364 may not, without prior written approval by the Director-

`(1) pay any bonus to any executive officer; or

`(2) provide compensation to any executive officer at a rate exceeding the average rate of compensation of that officer (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became significantly undercapitalized.'.

## **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED ENTERPRISES.**

(a) IN GENERAL- Section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) is amended to read as follows:

**SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED ENTERPRISES.**

(a) APPOINTMENT OF THE AGENCY AS CONSERVATOR OR RECEIVER-

(1) IN GENERAL- Notwithstanding any other provision of Federal law, the Director may establish a conservatorship or receivership in the manner provided under paragraph (2).

(2) APPOINTMENT- The Agency may, at the discretion of the Director, be appointed conservator or receiver for the purpose of reorganizing, rehabilitating, or winding up the affairs of an enterprise.

(3) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER- The grounds for appointing a conservator or receiver for any enterprise are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS- The assets of the enterprise are less than the obligations of the enterprise to its creditors and others.

(B) SUBSTANTIAL DISSIPATION- Substantial dissipation of assets or earnings due to-

(i) any violation of any provision of Federal or State law; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION- An unsafe or unsound condition to transact business.

(D) CEASE-AND-DESIST ORDERS- Any willful violation of a cease-and-desist order that has become final.

(E) CONCEALMENT- Any concealment of the books, papers, records, or assets of the enterprise, or any refusal to submit the books, papers, records, or affairs of the enterprise, for inspection to any examiner or to any lawful agent of the Director.

(F) INABILITY TO MEET OBLIGATIONS- The enterprise is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(G) LOSSES- The enterprise has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the enterprise to become adequately capitalized (as defined in section 1364(a)(1)).

(H) VIOLATIONS OF LAW- Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to-

(i) cause insolvency or substantial dissipation of assets or earnings; or

(ii) weaken the condition of the enterprise.

(I) CONSENT- The enterprise, by resolution of its board of directors or its shareholders

or members, consents to the appointment.

^(J) UNDERCAPITALIZATION- The enterprise is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3)), and--

^(i) has no reasonable prospect of becoming adequately capitalized;

^(ii) fails to become adequately capitalized, as required by--

^(I) section 1365(a)(1) with respect to an undercapitalized enterprise; or

^(II) section 1366(a)(1) with respect to a significantly undercapitalized enterprise;

^(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

^(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

^(K) CRITICAL UNDERCAPITALIZATION- The enterprise is critically undercapitalized, as defined in section 1364(a)(4).

^(L) MONEY LAUNDERING- The Attorney General notifies the Director in writing that the enterprise has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

^(4) JUDICIAL REVIEW-

^(A) IN GENERAL- If the Agency is appointed conservator or receiver under this section, the enterprise may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of such enterprise is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

^(B) REVIEW- Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

^(5) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER- The members of the board of directors of an enterprise shall not be liable to the shareholders or creditors of the enterprise for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that enterprise.

^(6) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY- When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

^(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER-

`(1) RULEMAKING AUTHORITY OF THE AGENCY- The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

`(2) GENERAL POWERS-

`(A) SUCCESSOR TO ENTERPRISE- The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to--

`(i) all rights, titles, powers, and privileges of the enterprise, and of any stockholder, officer, or director of such enterprise with respect to the enterprise and the assets of the enterprise; and

`(ii) title to the books, records, and assets of any other legal custodian of such enterprise.

`(B) OPERATE THE ENTERPRISE- The Agency may, as conservator or receiver--

`(i) take over the assets of and operate the enterprise with all the powers of the shareholders, the directors, and the officers of the enterprise and conduct all business of the enterprise;

`(ii) collect all obligations and money due the enterprise;

`(iii) perform all functions of the enterprise in the name of the enterprise which are consistent with the appointment as conservator or receiver; and

`(iv) preserve and conserve the assets and property of such enterprise.

`(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF AN ENTERPRISE- The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any enterprise for which the Agency has been named conservator or receiver.

`(D) POWERS AS CONSERVATOR- The Agency may, as conservator, take such action as may be--

`(i) necessary to put the enterprise in a sound and solvent condition; and

`(ii) appropriate to carry on the business of the enterprise and preserve and conserve the assets and property of the enterprise.

`(E) ADDITIONAL POWERS AS RECEIVER- The Agency may, as receiver, place the enterprise in liquidation and proceed to realize upon the assets of the enterprise, having due regard to the conditions of the housing finance market.

`(F) ORGANIZATION OF NEW ENTERPRISES- The Agency may, as receiver, organize a successor enterprise that will operate pursuant to subsection (i).

`(G) TRANSFER OF ASSETS AND LIABILITIES- The Agency may, as conservator or receiver, transfer any asset or liability of the enterprise in default without any approval,

assignment, or consent with respect to such transfer.

^(H) PAYMENT OF VALID OBLIGATIONS- The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of an enterprise, pay all valid obligations of the enterprise in accordance with the prescriptions and limitations of this section.

^(I) SUBPOENA AUTHORITY-

^(i) IN GENERAL-

^(I) IN GENERAL- The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to an enterprise (including determining any claim against the enterprise and determining and realizing upon any asset of any person in the course of collecting money due the enterprise), exercise any power established under section 1348.

^(II) APPLICABILITY OF LAW- The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

^(ii) AUTHORITY OF DIRECTOR- A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Director, or the designee of the Director.

^(iii) RULE OF CONSTRUCTION- This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379B.

^(J) INCIDENTAL POWERS- The Agency may, as conservator or receiver--

^(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

^(ii) take any action authorized by this section, which the Agency determines is in the best interests of the enterprise or the Agency.

^(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS-

^(A) IN GENERAL- The Agency may, as receiver, determine claims in accordance with the requirements of this subsection and any regulations prescribed under paragraph (4).

^(B) NOTICE REQUIREMENTS- The receiver, in any case involving the liquidation or winding up of the affairs of a closed enterprise, shall--

^(i) promptly publish a notice to the creditors of the enterprise to present their

claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

^ (ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

^ (C) MAILING REQUIRED- The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the enterprise--

^ (i) at the last address of the creditor appearing in such books; or

^ (ii) upon discovery of the name and address of a claimant not appearing on the books of the enterprise within 30 days after the discovery of such name and address.

^ (4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS- Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

^ (5) PROCEDURES FOR DETERMINATION OF CLAIMS-

^ (A) DETERMINATION PERIOD-

^ (i) IN GENERAL- Before the end of the 180-day period beginning on the date on which any claim against an enterprise is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

^ (ii) EXTENSION OF TIME- The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

^ (iii) MAILING OF NOTICE SUFFICIENT- The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears--

^ (I) on the books of the enterprise;

^ (II) in the claim filed by the claimant; or

^ (III) in documents submitted in proof of the claim.

^ (iv) CONTENTS OF NOTICE OF DISALLOWANCE- If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain--

^ (I) a statement of each reason for the disallowance; and

^ (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

^(B) ALLOWANCE OF PROVEN CLAIM- The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

^(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD- Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

^(D) AUTHORITY TO DISALLOW CLAIMS-

^(i) IN GENERAL- The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

^(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS- In the case of a claim of a creditor against an enterprise which is secured by any property or other asset of such enterprise, the receiver may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the enterprise.

^(iii) EXCEPTIONS- No provision of this paragraph shall apply with respect to--

^(I) any extension of credit from any Federal Reserve Bank or the United States Treasury; or

^(II) any security interest in the assets of the enterprise securing any such extension of credit.

^(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D)- No court may review the determination of the Agency under subparagraph (D) to disallow a claim.

^(F) LEGAL EFFECT OF FILING-

^(i) STATUTE OF LIMITATION TOLLED- For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

^(ii) NO PREJUDICE TO OTHER ACTIONS- Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

^(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS-

^(A) IN GENERAL- The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the enterprise is located or the United States District Court for the District of Columbia

(and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of--

^ (i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against an enterprise for which the Agency is receiver; or

^ (ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

^ (B) STATUTE OF LIMITATIONS- A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

^ (7) REVIEW OF CLAIMS-

^ (A) OTHER REVIEW PROCEDURES-

^ (i) IN GENERAL- The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

^ (ii) CRITERIA- In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

^ (iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES- The Agency may establish both binding and nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

^ (B) CONSIDERATION OF INCENTIVES- The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

^ (8) EXPEDITED DETERMINATION OF CLAIMS-

^ (A) ESTABLISHMENT REQUIRED- The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who--

^ (i) allege the existence of legally valid and enforceable or perfected security interests in assets of any enterprise for which the Agency has been appointed receiver; and

^ (ii) allege that irreparable injury will occur if the routine claims procedure is followed.

^ (B) DETERMINATION PERIOD- Before the end of the 90-day period beginning on the

date any claim is filed in accordance with the procedures established under subparagraph (A), the Director shall--

^ (i) determine--

^ (I) whether to allow or disallow such claim; or

^ (II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

^ (ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

^ (C) PERIOD FOR FILING OR RENEWING SUIT- Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of--

^ (i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

^ (ii) the date the Agency denies the claim.

^ (D) STATUTE OF LIMITATIONS- If an action described under subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed under subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

^ (E) LEGAL EFFECT OF FILING-

^ (i) STATUTE OF LIMITATION TOLLED- For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

^ (ii) NO PREJUDICE TO OTHER ACTIONS- Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

^ (9) PAYMENT OF CLAIMS-

^ (A) IN GENERAL- The receiver may, in the discretion of the receiver, and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are--

^ (i) allowed by the receiver;

^(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

^(iii) determined by the final judgment of any court of competent jurisdiction.

^(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY- No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing.

^(C) PAYMENT OF DIVIDENDS ON CLAIMS- The receiver may, in the sole discretion of the receiver, pay dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

^(C) RULEMAKING AUTHORITY OF THE DIRECTOR- The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of enterprises following satisfaction by the receiver of the principal amount of all creditor claims.

^(10) SUSPENSION OF LEGAL ACTIONS-

^(A) IN GENERAL- After the appointment of a conservator or receiver for an enterprise, the conservator or receiver may, in any judicial action or proceeding to which such enterprise is or becomes a party, request a stay for a period not to exceed--

^(i) 45 days, in the case of any conservator; and

^(ii) 90 days, in the case of any receiver.

^(B) GRANT OF STAY BY ALL COURTS REQUIRED- Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

^(11) ADDITIONAL RIGHTS AND DUTIES-

^(A) PRIOR FINAL ADJUDICATION- The Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Agency as conservator or receiver.

^(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER- In the event of any appealable judgment, the Agency as conservator or receiver shall--

^(i) have all the rights and remedies available to the enterprise (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

^(ii) not be required to post any bond in order to pursue such remedies.

^(C) NO ATTACHMENT OR EXECUTION- No attachment or execution may issue by any court upon assets in the possession of the receiver.

^(D) LIMITATION ON JUDICIAL REVIEW- Except as otherwise provided in this subsection, no court shall have jurisdiction over--

^(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any enterprise for which the Agency has been appointed receiver; or

^(ii) any claim relating to any act or omission of such enterprise or the Agency as receiver.

^(E) DISPOSITION OF ASSETS- In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of an enterprise for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which--

^(i) maximizes the net present value return from the sale or disposition of such assets;

^(ii) minimizes the amount of any loss realized in the resolution of cases; and

^(iii) ensures adequate competition and fair and consistent treatment of offerors.

^(12) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER-

^(A) IN GENERAL- Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Agency as conservator or receiver shall be--

^(i) in the case of any contract claim, the longer of--

^(I) the 6-year period beginning on the date the claim accrues; or

^(II) the period applicable under State law; and

^(ii) in the case of any tort claim, the longer of--

^(I) the 3-year period beginning on the date the claim accrues; or

^(II) the period applicable under State law.

^(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES- For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of--

^(i) the date of the appointment of the Agency as conservator or receiver; or

^(ii) the date on which the cause of action accrues.

^(13) REVIVAL OF EXPIRED STATE CAUSES OF ACTION-

^(i) IN GENERAL- In the case of any tort claim described under clause (ii) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

^(ii) CLAIMS DESCRIBED- A tort claim referred to under clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the enterprise.

^(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS-

^(A) IN GENERAL- The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of an enterprise in default.

^(B) ANNUAL ACCOUNTING OR REPORT- With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

^(C) AVAILABILITY OF REPORTS- Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of an enterprise or any member of the public.

^(D) RECORDKEEPING REQUIREMENT- After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such enterprise which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

^(15) FRAUDULENT TRANSFERS-

^(A) IN GENERAL- The Agency, as conservator or receiver, may avoid a transfer of any interest of an enterprise-affiliated party, or any person who the conservator or receiver determines is a debtor of the enterprise, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the enterprise, the Agency, the conservator, or receiver.

^(B) RIGHT OF RECOVERY- To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the enterprise, the property transferred, or, if a court so orders, the value of such property (at the time of such

transfer) from--

^(i) the initial transferee of such transfer or the enterprise-affiliated party or person for whose benefit such transfer was made; or

^(ii) any immediate or mediate transferee of any such initial transferee.

^(C) RIGHTS OF TRANSFEREE OR OBLIGEE- The conservator or receiver may not recover under subparagraph (B) from--

^(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

^(ii) any immediate or mediate good faith transferee of such transferee.

^(D) RIGHTS UNDER THIS PARAGRAPH- The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

^(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF- Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

^(17) STANDARDS OF PROOF- Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

^(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR-

^(A) IN GENERAL- Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

^(B) NO LIMITATION OF POWER- Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

^(19) GENERAL EXCEPTIONS-

^(A) LIMITATIONS- The rights of a conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

`(B) MORTGAGES HELD IN TRUST-

`(i) IN GENERAL- Any mortgage, or pool of mortgages, held in trust, custodial, or agency capacity by an enterprise shall not be available to satisfy the claims of creditors generally.

`(ii) HOLDING OF MORTGAGES- Any mortgage or pool of mortgages described under clause (i) shall be held by the conservator or receiver appointed under this subsection for the beneficial owners of such mortgages, under the terms of the agreement creating such trust, custodial, or other agency arrangement.

`(iii) LIABILITY OF RECEIVER- The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

`(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS-

`(1) IN GENERAL- Unsecured claims against an enterprise, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

`(A) Administrative expenses of the receiver.

`(B) Any general or senior liability of the enterprise (which is not a liability described under subparagraph (C) or (D)).

`(C) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (D)).

`(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

`(2) CREDITORS SIMILARLY SITUATED- All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner.

`(3) DEFINITION- The term `administrative expenses of the receiver' shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed enterprise. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the enterprise.

`(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER-

`(1) AUTHORITY TO REPUDIATE CONTRACTS- In addition to any other rights a conservator or receiver may have, the conservator or receiver for any enterprise may disaffirm or repudiate any contract or lease--

`(A) to which such enterprise is a party;

^(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

^(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the enterprise.

^(2) TIMING OF REPUDIATION- The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

^(3) CLAIMS FOR DAMAGES FOR REPUDIATION-

^(A) IN GENERAL- Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be--

^(i) limited to actual direct compensatory damages; and

^(ii) determined as of--

^(I) the date of the appointment of the conservator or receiver; or

^(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

^(B) NO LIABILITY FOR OTHER DAMAGES- For purposes of subparagraph (A), the term 'actual direct compensatory damages' shall not include--

^(i) punitive or exemplary damages;

^(ii) damages for lost profits or opportunity; or

^(iii) damages for pain and suffering.

^(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS- In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be--

^(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

^(ii) paid in accordance with this subsection and subsection (f), except as otherwise specifically provided in this section.

^(4) LEASES UNDER WHICH THE ENTERPRISE IS THE LESSEE-

^(A) IN GENERAL- If the conservator or receiver disaffirms or repudiates a lease under which the enterprise was the lessee, the conservator or receiver shall not be liable for

any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.

“(B) PAYMENTS OF RENT- Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—

“(i) be entitled to the contractual rent accruing before the later of the date—

“(I) the notice of disaffirmance or repudiation is mailed; or

“(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

“(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

“(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (f).

“(5) LEASES UNDER WHICH THE ENTERPRISE IS THE LESSOR-

“(A) IN GENERAL- If the conservator or receiver repudiates an unexpired written lease of real property of the enterprise under which the enterprise is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

“(i) treat the lease as terminated by such repudiation; or

“(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

“(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION- If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of such subparagraph—

“(i) the lessee—

“(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

“(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the enterprise under the lease after such date; and

“(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

^(6) CONTRACTS FOR THE SALE OF REAL PROPERTY-

^(A) IN GENERAL- If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either--

^(i) treat the contract as terminated by such repudiation; or

^(ii) remain in possession of such real property.

^(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION- If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph--

^(i) the purchaser--

^(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

^(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the enterprise under the contract; and

^(ii) the conservator or receiver shall--

^(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

^(II) deliver title to the purchaser in accordance with the provisions of the contract; and

^(III) have no obligation under the contract other than the performance required under subclause (II).

^(C) ASSIGNMENT AND SALE ALLOWED-

^(i) IN GENERAL- No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

^(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE- If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

^(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS-

^(A) SERVICES PERFORMED BEFORE APPOINTMENT- In the case of any contract for

services between any person and any enterprise for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be--

^ (i) a claim to be paid in accordance with subsections (b) and (f); and

^ (ii) deemed to have arisen as of the date the conservator or receiver was appointed.

^ (B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION- If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section--

^ (i) the other party shall be paid under the terms of the contract for the services performed; and

^ (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

^ (C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION- The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

^ (8) CERTAIN QUALIFIED FINANCIAL CONTRACTS-

^ (A) RIGHTS OF PARTIES TO CONTRACTS- Subject to paragraph (10) and notwithstanding any other provision of this Act, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising--

^ (i) any right to cause the termination or liquidation of any qualified financial contract with an enterprise that arises upon the appointment of the Agency as receiver for such enterprise at any time after such appointment;

^ (ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or

^ (iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

^ (B) APPLICABILITY OF OTHER PROVISIONS- Subsection (b)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the enterprise for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such enterprise.

^(C) CERTAIN TRANSFERS NOT AVOIDABLE-

^(i) IN GENERAL- Notwithstanding paragraph (11), the Agency, whether acting as such or as conservator or receiver of an enterprise, may not avoid any transfer of money or other property in connection with any qualified financial contract with an enterprise.

^(ii) EXCEPTION FOR CERTAIN TRANSFERS- Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an enterprise if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such enterprise, the creditors of such enterprise, or any conservator or receiver appointed for such enterprise.

^(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED- In this subsection:

^(i) QUALIFIED FINANCIAL CONTRACT- The term 'qualified financial contract' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation to be a qualified financial contract for purposes of this paragraph.

^(ii) SECURITIES CONTRACT- The term 'securities contract' has the meaning given to such term under section 741 of title 11, United States Code, except that the term 'security' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security, and does not include any participation in a commercial mortgage loan.

^(iii) COMMODITY CONTRACT- The term 'commodity contract' has the meaning given to such term in section 761 of title 11, United States Code.

^(iv) FORWARD CONTRACT- The term 'forward contract' has the meaning given to such term in section 101 of title 11, United States Code.

^(v) REPURCHASE AGREEMENT- The term 'repurchase agreement' has the meaning given to such term in section 101 of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934), any mortgage loan, and any interest in any mortgage loan and does not include any participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term.

^(vi) SWAP AGREEMENT- The term 'swap agreement'--

^(l) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap

agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement; and

“(II) includes any combination of such agreements and any option to enter into any such agreement.

“(vii) TREATMENT OF MASTER AGREEMENT AS 1 QUALIFIED FINANCIAL CONTRACT- Any master agreement for any agreements described under this subparagraph, together with all supplements to such master agreement, shall be treated as 1 qualified financial contract.

“(viii) TRANSFER- The term ‘transfer’ has the meaning given to such term in section 101 of title 11, United States Code.

“(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR- Notwithstanding any other provision of this Act (other than paragraph (12) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising--

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an enterprise in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

“(ii) any right under any security arrangement relating to such qualified financial contracts; or

“(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

“(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS- In making any transfer of assets or liabilities of an enterprise in default which includes any qualified financial contract, the conservator or receiver for such enterprise shall either--

“(A) transfer to 1 person--

“(i) all qualified financial contracts between--

“(I) any person (or any affiliate of such person); and

“(II) the enterprise in default;

“(ii) all claims of such person (or any affiliate of such person) against such enterprise under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured

creditors of such enterprise);

`(iii) all claims of such enterprise against such person (or any affiliate of such person) under any such contract; and

`(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

`(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

`(10) NOTIFICATION OF TRANSFER-

`(A) IN GENERAL- If--

`(i) the conservator or receiver for an enterprise in default makes any transfer of the assets and liabilities of such enterprise;

`(ii) the transfer includes any qualified financial contract; and

`(iii) the conservator or receiver shall use best efforts to notify any person who is a party to any such contract of such transfer by 12 p.m. (noon) (Eastern Standard Time) on the business day following such transfer.

`(B) BUSINESS DAY DEFINED- For purposes of this paragraph, the term `business day' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

`(11) CERTAIN SECURITY INTERESTS NOT AVOIDABLE- No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any enterprise, except where such an interest is taken in contemplation of the insolvency of the enterprise, or with the intent to hinder, delay, or defraud the enterprise or the creditors of such enterprise.

`(12) AUTHORITY TO ENFORCE CONTRACTS-

`(A) IN GENERAL- Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the conservator or receiver may enforce any contract, other than a liability insurance of a director or officer, or a contract or an enterprise bond, entered into by the enterprise.

`(B) CERTAIN RIGHTS NOT AFFECTED- No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a liability insurance contract of an officer or director, or enterprise bond under other applicable law.

`(C) CONSENT REQUIREMENT-

`(i) IN GENERAL- Except as otherwise provided under this section, no person

may exercise any right or power to terminate, accelerate, or declare a default under any contract to which an enterprise is a party, or to obtain possession of or exercise control over any property of the enterprise, or affect any contractual rights of the enterprise, without the consent of the conservator or receiver, as appropriate, for a period of--

^(I) 45 days after the date of appointment of a conservator; or

^(II) 90 days after the date of appointment of a receiver.

^(ii) EXCEPTIONS- This subparagraph shall--

^(I) not apply to the liability insurance contract of an officer or director;

^(II) not apply to the rights of parties to certain qualified financial contracts under subsection (d)(8); and

^(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

^(e) VALUATION OF CLAIMS IN DEFAULT-

^(1) IN GENERAL- Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to an enterprise in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such enterprise.

^(2) MAXIMUM LIABILITY- The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the enterprise for which such receiver is appointed shall equal the lesser of--

^(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such enterprise without exercising the authority of the Agency under subsection (i) of this section; or

^(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the enterprise.

^(f) LIMITATION ON COURT ACTION- Except as provided in this section, no court may take any action, except at the request of the Director, by regulation or order, to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

^(g) LIABILITY OF DIRECTORS AND OFFICERS-

^(1) IN GENERAL- A director or officer of an enterprise may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency--

^(A) acting as conservator or receiver of such enterprise;

^(B) acting based upon a suit, claim, or cause of action purchased from, assigned by,

or otherwise conveyed by such receiver or conservator; or

^(C) for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

^(2) NO LIMITATION- Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

^(h) DAMAGES- In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an enterprise, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the enterprise shall include principal losses and appropriate interest.

^(i) LIMITED-LIFE ENTERPRISE-

^(1) ORGANIZATION-

^(A) PURPOSE- If an enterprise is in default, or if the Agency anticipates that an enterprise will default, the Agency may organize a limited-life enterprise with those powers and attributes of the enterprise in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life enterprise, and the limited-life enterprise shall operate subject to that charter.

^(B) AUTHORITIES- Upon the creation of a limited-life enterprise under subparagraph (A), the limited-life enterprise may--

^(i) assume such liabilities of the enterprise that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life enterprise;

^(ii) purchase such assets of the enterprise that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

^(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

^(2) CHARTER-

^(A) CONDITIONS- The Agency may grant a temporary charter if the Agency determines that the continued operation of the enterprise in default or in danger of default is in the best interest of the national economy and the housing markets.

^(B) LIMITED-LIFE ENTERPRISE TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES- A limited-life enterprise shall be treated as an enterprise in default at such times and for such purposes as the Agency may, in its discretion, determine.

^(C) MANAGEMENT- A limited-life enterprise, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

^(D) BYLAWS- The board of directors of a limited-life enterprise shall adopt such bylaws as may be approved by the Agency.

^(3) CAPITAL STOCK- No capital stock need be paid into a limited-life enterprise by the Agency.

^(4) INVESTMENTS- Funds of a limited-life enterprise shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

^(5) EXEMPT STATUS- Notwithstanding any other provision of Federal or State law, the limited-life enterprise, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

^(6) OTHER EXEMPTIONS- When acting as a receiver, the following provisions shall apply with respect to the Agency:

^(A) The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

^(B) No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

^(C) The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

^(7) WINDING UP-

^(A) IN GENERAL- Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life enterprise, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life enterprise.

^(B) EXTENSION- The Director may, in the discretion of the Director, extend the status of the limited-life enterprise for 3 additional 1-year periods.

^(8) TRANSFER OF ASSETS AND LIABILITIES-

^(A) IN GENERAL-

^(i) TRANSFER OF ASSETS AND LIABILITIES- The Agency, as receiver, may transfer any assets and liabilities of an enterprise in default, or in danger of default, to the limited-life enterprise in accordance with paragraph (1).

^(ii) SUBSEQUENT TRANSFERS- At any time after a charter is transferred to a limited-life enterprise, the Agency, as receiver, may transfer any assets and liabilities of such enterprise in default, or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).

^(iii) EFFECTIVE WITHOUT APPROVAL- The transfer of any assets or liabilities of an enterprise in default, or in danger of default, transferred to a limited-life enterprise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

^(9) PROCEEDS- To the extent that available proceeds from the limited-life enterprise exceed amounts required to pay obligations, such proceeds may be paid to the enterprise in default, or in danger of default.

^(10) POWERS OF LIMITED-LIFE ENTERPRISES-

^(A) IN GENERAL- Each limited-life enterprise created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the enterprise in default or in danger of default to which it relates, except that--

^(i) the Agency may--

^(I) remove the directors of a limited-life enterprise; and

^(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life enterprise;

^(ii) the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life enterprise on such terms as the Agency determines to be appropriate; and

^(iii) the board of directors of a limited-life enterprise--

^(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

^(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

^(B) STAY OF JUDICIAL ACTION- Any judicial action to which a limited-life enterprise becomes a party by virtue of its acquisition of any assets or assumption of any

liabilities of an enterprise in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life enterprise. Such period may be modified upon the consent of all parties.

^(11) NO FEDERAL STATUS-

^(A) AGENCY STATUS- A limited-life enterprise is not an agency, establishment, or instrumentality of the United States.

^(B) EMPLOYEE STATUS- Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life enterprise are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life enterprise shall not-

^(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

^(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life enterprise in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

^(j) PROHIBITION OF CHARTER REVOCATION- In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of an enterprise.

^(k) OBTAINING CREDIT BY A LIMITED-LIFE ENTERPRISE-

^(1) IN GENERAL- The limited-life enterprise may obtain unsecured credit and incur unsecured debt in the ordinary course of business.

^(2) INABILITY TO OBTAIN CREDIT- If the limited-life enterprise is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt-

^(A) with priority over any or all administrative expenses;

^(B) secured by a lien on property that is not otherwise subject to a lien; or

^(C) secured by a junior lien on property that is subject to a lien.

^(3) LIMITATIONS-

^(A) IN GENERAL- The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the enterprise) only if-

^(i) the limited-life enterprise is unable to obtain such credit otherwise; and

^(ii) there is adequate protection of the interest of the holder of the lien on the

property which such senior or equal lien is proposed to be granted.

`(B) BURDEN OF PROOF- In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

`(4) AFFECT ON DEBTS AND LIENS- The reversal or modification on appeal of an authorization under this subsection to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

(b) TECHNICAL AND CONFORMING AMENDMENTS- The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended--

(1) in section 1368 (12 U.S.C. 4618)--

(A) by striking `an enterprise' each place that term appears and inserting `a regulated entity'; and

(B) by striking `the enterprise' each place that term appears and inserting `the regulated entity';

(2) in section 1369C (12 U.S.C. 4622), by striking `enterprise' each place that term appears and inserting `regulated entity';

(3) in section 1369D (12 U.S.C. 4623)--

(A) by striking `an enterprise' each place that term appears and inserting `a regulated entity'; and

(B) in subsection (a)(1), by striking `An enterprise' and inserting `A regulated entity'; and

(4) by striking sections 1369, 1369A, and 1369B (12 U.S.C. 4619, 4620, and 4621).

#### **Subtitle D--Enforcement Actions**

### **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

Section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631) is amended--

(1) by striking subsections (a) and (b) and inserting the following:

`(a) ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS- If, in the opinion of the Director, a regulated entity, any enterprise-affiliated party, or the Federal Home Loan Bank Finance Corporation, is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity, any enterprise-affiliated party, or the Federal Home Loan Bank Finance Corporation is about to engage, in an unsafe or unsound practice in conducting the business of

the regulated entity, or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity, any enterprise-affiliated party, or the Federal Home Loan Bank Finance Corporation is about to violate, a law, rule, regulation, or order, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity, enterprise-affiliated party, or the Federal Home Loan Bank Finance Corporation a notice of charges in respect thereof.

“(b) ISSUANCE FOR UNSATISFACTORY RATING- If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for credit risk, market risk, operations, or corporate governance, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of subsection (a).”;

(2) in subsection (c)(2)–

(A) by striking “or director” and inserting “director, or enterprise-affiliated party”; and

(B) by inserting “or enterprise-affiliated party” before “consents”;

(3) in subsections (c), (d), and (e)–

(A) by striking “the enterprise” each place that term appears and inserting “the regulated entity”; and

(B) by striking “an enterprise” each place that term appears and inserting “a regulated entity”;

(4) in subsection (d)–

(A) by striking “or director” and inserting “director, or enterprise-affiliated party”; and

(B) in paragraph (1), by striking “or a director” and inserting “, director, or enterprise-affiliated party”;

(5) in each of subsections (d)(7) and (e), by inserting “or enterprise-affiliated party” after “enterprise” each place that term appears; and

(6) in subsection (f), by striking “or director” and inserting “director, or enterprise-affiliated party”.

## **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

Section 1372 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4632) is amended–

(1) by striking subsection (a) and inserting the following:

“(a) GROUNDS FOR ISSUANCE-

“(1) IN GENERAL- If the Director determines that the actions specified in the notice of

charges served upon a regulated entity, any enterprise-affiliated party, or the Federal Home Loan Bank Finance Corporation, pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of that entity, or is likely to weaken the condition of that entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may--

`(A) issue a temporary order requiring that entity to cease and desist from any such violation or practice; and

`(B) require that entity to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.

`(2) ADDITIONAL REQUIREMENTS- An order issued under paragraph (1) may include any requirement authorized under subsection 1371(d).';

(2) in subsection (b)--

(A) by striking `or director' and inserting `director, or enterprise-affiliated party'; and

(B) by striking `enterprise' and inserting `regulated entity';

(3) in subsection (c), by striking `enterprise' and inserting `regulated entity';

(4) in subsection (d)--

(A) by striking `or director' and inserting `director, or enterprise-affiliated party'; and

(B) by striking `An enterprise' and inserting `A regulated entity'; and

(5) by striking subsection (e) and inserting the following:

`(e) ENFORCEMENT- If a temporary cease-and-desist order is issued under subsection (a), the Director may apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that the notice of charges issued under section 1371(a) are accurate, it shall be the duty of the court to issue such injunction.!

## **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

(a) IN GENERAL- Subtitle C of part 1 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.) is amended--

(1) by redesignating sections 1377 through 1379B (12 U.S.C. 4637-4641) as sections 1379 through 1379D, respectively; and

(2) by inserting after section 1376 (12 U.S.C. 4636) the following:

## **`SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

^(a) AUTHORITY TO ISSUE ORDER-

^(1) IN GENERAL- The Director may serve upon a party described in paragraph (2), or any officer or director of the Federal Home Loan Bank Finance Corporation a written notice of the intention of the Director to suspend or remove such party from office, or prohibit any further participation by such party, in any manner, in the conduct of the affairs of the regulated entity.

^(2) APPLICABILITY- A party described in this paragraph is an enterprise-affiliated party or any officer or director of the Federal Home Loan Bank Finance Corporation, if the Director determines that-

^(A) that party, officer, or director has, directly or indirectly-

^(i) violated-

^(I) any law or regulation;

^(II) any cease-and-desist order which has become final;

^(III) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

^(IV) any written agreement between such regulated entity and the Director;

^(ii) engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or

^(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

^(B) by reason of the violation, practice, or breach described in subparagraph (A)-

^(i) such regulated entity has suffered or will probably suffer financial loss or other damage; or

^(ii) such party has received financial gain or other benefit; and

^(C) the violation, practice, or breach described in subparagraph (A)-

^(i) involves personal dishonesty on the part of such party; or

^(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity.

^(b) SUSPENSION ORDER-

^(1) SUSPENSION OR PROHIBITION AUTHORITY- If the Director serves written notice under subsection (a) upon a party subject to that subsection (a), the Director may, by order, suspend or remove such party from office, or prohibit such party from further participation in

any manner in the conduct of the affairs of the regulated entity, if the Director--

^(A) determines that such action is necessary for the protection of the regulated entity;  
and

^(B) serves such party with written notice of the order.

^(2) EFFECTIVE PERIOD- Any order issued under this subsection--

^(A) shall become effective upon service; and

^(B) unless a court issues a stay of such order under subsection (g), shall remain in effect and enforceable until--

^(i) the date on which the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

^(ii) the effective date of an order issued under subsection (b).

^(3) COPY OF ORDER- If the Director issues an order under subsection (b) to any party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

^(c) NOTICE, HEARING, AND ORDER-

^(1) NOTICE- A notice under subsection (a) of the intention of the Director to issue an order under this section shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action.

^(2) TIMING OF HEARING- A hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after the date of service of notice under subsection (a), unless an earlier or a later date is set by the Director at the request of--

^(A) the party receiving such notice, and good cause is shown; or

^(B) the Attorney General of the United States.

^(3) CONSENT- Unless the party that is the subject of a notice delivered under subsection (a) appears at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order under this section.

^(4) ISSUANCE OF ORDER OF SUSPENSION- The Director may issue an order under this section, as the Director may deem appropriate, if--

^(A) a party is deemed to have consented to the issuance of an order under paragraph (3); or

^(B) upon the record made at the hearing, the Director finds that any of the grounds specified in the notice have been established.

^(5) EFFECTIVENESS OF ORDER- Any order issued under paragraph (4) shall become

effective at the expiration of 30 days after the date of service upon the relevant regulated entity and party (except in the case of an order issued upon consent under paragraph (3), which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

^(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES- Any person subject to an order issued under this section shall not--

^(1) participate in any manner in the conduct of the affairs of any regulated entity or the Federal Home Loan Bank Finance Corporation;

^(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

^(3) violate any voting agreement previously approved by the Director; or

^(4) vote for a director, or serve or act as an enterprise-affiliated party of a regulated entity or as an officer or director of the Federal Home Loan Bank Finance Corporation.

^(e) INDUSTRY-WIDE PROHIBITION-

^(1) IN GENERAL- Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or the Federal Home Loan Bank Finance Corporation, or prohibited from participating in the conduct of the affairs of a regulated entity or such Corporation, may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity or such Corporation.

^(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT- If, on or after the date on which an order is issued under this section which removes or suspends from office any party, or prohibits such party from participating in the conduct of the affairs of a regulated entity or the Federal Home Loan Bank Finance Corporation, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity or such Corporation described in the written consent. Any such consent shall be publicly disclosed.

^(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER- Any violation of paragraph (1) by any person who is subject to an order issued under subsection (h) shall be treated as a violation of the order.

^(f) APPLICABILITY- This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business entity.

^(g) STAY OF SUSPENSION AND PROHIBITION OF ENTERPRISE-AFFILIATED PARTY- Not later than 10 days after the date on which any enterprise-affiliated party has been suspended from office or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension or prohibition pending the completion of the administrative

proceedings pursuant to subsection (c). The court shall have jurisdiction to stay such suspension or prohibition.

^(h) SUSPENSION OR REMOVAL OF ENTERPRISE-AFFILIATED PARTY CHARGED WITH FELONY-

^(1) SUSPENSION OR PROHIBITION-

^(A) IN GENERAL- Whenever any enterprise-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding 1 year under Federal or State law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity.

^(B) PROVISIONS APPLICABLE TO NOTICE-

^(i) COPY- A copy of any notice under subparagraph (A) shall be served upon the relevant regulated entity.

^(ii) EFFECTIVE PERIOD- A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in subparagraph (A) is finally disposed of, or until terminated by the Director.

^(2) REMOVAL OR PROHIBITION-

^(A) IN GENERAL- If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an enterprise-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director.

^(B) PROVISIONS APPLICABLE TO ORDER-

^(i) COPY- A copy of any order under subparagraph (A) shall be served upon the relevant regulated entity, at which time the enterprise-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

^(ii) EFFECT OF ACQUITTAL- A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove a party from office or to prohibit further participation in the affairs of a regulated entity pursuant to subsection (a), (d), or (e).

^(iii) EFFECTIVE PERIOD- Unless terminated by the Director, any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4).

^(3) AUTHORITY OF REMAINING BOARD MEMBERS-

^(A) IN GENERAL- If at any time, because of the suspension of 1 or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors.

^(B) APPOINTMENT OF TEMPORARY DIRECTORS- If all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

^(4) HEARING REGARDING CONTINUED PARTICIPATION-

^(A) IN GENERAL- Not later than 30 days after the date of service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2), the enterprise-affiliated party may request in writing an opportunity to appear before the Director to show that the continued service or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity, or threaten to impair public confidence in the regulated entity.

^(B) TIMING AND FORM OF HEARING- Upon receipt of a request for a hearing under subparagraph (A), the Director shall fix a time (not later than 30 days after the date of receipt of such request, unless extended at the request of such party) and place at which the enterprise-affiliated party may appear, personally or through counsel, before the Director or 1 or more designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument.

^(C) DETERMINATION- Not later than 60 days after the date of a hearing under subparagraph (B), the Director shall notify the enterprise-affiliated party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for any adverse decision of the Director.

^(5) RULES- The Director is authorized to prescribe such rules as may be necessary to carry out this subsection.

^(i) HEARINGS AND JUDICIAL REVIEW-

^(1) VENUE AND PROCEDURE-

^(A) IN GENERAL- Any hearing under this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regulated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

^(B) DECISION- After any hearing under this section, and not later than 90 days after the Director has notified the parties that the case has been submitted to it for final decision, the Director shall render its decision (which shall include findings of fact upon which the decision of the Director is predicated) and issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section.

^(C) JUDICIAL REVIEW- Judicial review of any order issued under subparagraph (B) shall be exclusively as provided in this subsection.

^(D) MODIFICATION OF ORDER-

^(i) IN GENERAL- Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed with the court, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

^(ii) LIMITATION- Upon the filing of the record, the Director may modify, terminate, or set aside any order under this subsection only with permission of the court.

^(2) REVIEW OF ORDER-

^(A) IN GENERAL- Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the enterprise-affiliated party, or an order issued under subsection (h)) by the filing in the United States Court of Appeals for the District of Columbia Circuit, or the Court of Appeals of the United States for the circuit in which the headquarters of the relevant regulated entity is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside.

^(B) FORWARDING OF PETITION; FILING OF RECORD- A copy of any petition filed under subparagraph (A) shall be transmitted by the clerk of the court to the Director, and the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

^(C) JURISDICTION- Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction, which upon the filing of the record shall (except as provided

under paragraph (1)(D)(ii) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

`(D) FINALITY OF DECREE- The judgment and decree of the court under this paragraph shall be final, except that it shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28, United States Code.

`(3) PROCEEDINGS NOT TREATED AS STAY- The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.!

(b) CONFORMING AMENDMENTS-

(1) 1992 ACT- Section 1317(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517(f)) is amended by striking `section 1379B' and inserting `section 1379D'.

(2) FANNIE MAE CHARTER ACT- Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended in the second sentence, by striking `The' and inserting `Except to the extent that action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the'.

(3) FREDDIE MAC CHARTER ACT- Section 303(a)(2)(A) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended, in the second sentence, by striking `The' and inserting `Except to the extent action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 temporarily results in a lesser number, the'.

## SEC. 154. ENFORCEMENT AND JURISDICTION.

(a) IN GENERAL- Section 1375 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4635) is amended--

(1) by striking subsection (a) and inserting the following:

`(a) ENFORCEMENT- The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice, order, or subpoena issued under this title, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice, order, or subpoena.!' and

(2) in subsection (b), by striking `or 1376' and inserting `1376, or 1377'.

(b) CONFORMING AMENDMENT- Section 1379B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4641) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

## SEC. 155. CIVIL MONEY PENALTIES.

Section 1376 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4636) is amended--

(1) in subsection (a), in the matter preceding paragraph (1), by striking `Any enterprise, or any executive officer or director of any enterprise' and inserting `Any regulated entity, or any executive officer of a regulated entity or any enterprise-affiliated party,'; and

(2) by striking subsection (b) and inserting the following:

^(b) AMOUNT OF PENALTY-

^(1) FIRST TIER- A regulated entity or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than \$10,000 for each day during which a violation continues, if such regulated entity or party--

^(A) violates any provision of this title, the authorizing statutes, or any order, condition, rule, or regulation under this title or any authorizing statute;

^(B) violates any final or temporary order or notice issued pursuant to this title;

^(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity;

^(D) violates any written agreement between the regulated entity and the Director; or

^(E) engages in any conduct that the Director determines to be an unsafe or unsound practice.

^(2) SECOND TIER- Notwithstanding paragraph (1), a regulated entity or enterprise-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if--

^(A) the regulated entity or enterprise-affiliated party, respectively--

^(i) commits any violation described in any subparagraph of paragraph (1);

^(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of the regulated entity; or

^(iii) breaches any fiduciary duty; and

^(B) the violation, practice, or breach--

^(i) is part of a pattern of misconduct;

^(ii) causes or is likely to cause more than a minimal loss to the regulated entity;  
or

^(iii) results in pecuniary gain or other benefit to such party.

`(3) THIRD TIER- Notwithstanding paragraphs (1) and (2), any regulated entity or enterprise-affiliated party shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues, if such regulated entity or enterprise-affiliated party--

`(A) knowingly--

`(i) commits any violation described in any subparagraph of paragraph (1);

`(ii) engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

`(iii) breaches any fiduciary duty; and

`(B) knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

`(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3)- The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in paragraph (3) is--

`(A) in the case of any enterprise-affiliated party, an amount not to exceed \$2,000,000; and

`(B) in the case of any regulated entity, \$2,000,000.;

(3) in subsection (c), by striking `enterprise' each place that term appears and inserting `regulated entity';

(4) in subsection (d)--

(A) by striking `or director' each place such term appears and inserting `director, or enterprise-affiliated party';

(B) by striking `an enterprise' and inserting `a regulated entity';

(C) by striking `the enterprise' and inserting `the regulated entity';

(D) by striking `request the Attorney General of the United States to';

(E) by inserting `, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located,' after `District of Columbia';

(F) by striking `, or may, under the direction and control of the Attorney General of the United States, bring such an action'; and

(G) by striking `and section 1374'; and

(5) in subsection (g), by striking `An enterprise' and inserting `A regulated entity'.

## **SEC. 156. CRIMINAL PENALTY.**

(a) IN GENERAL- Subtitle C of title XIII of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4631 et seq.), as amended by this Act, is amended by adding at the end the following:

## **SEC. 1378. CRIMINAL PENALTY.**

Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.'

(b) TECHNICAL AND CONFORMING AMENDMENTS- The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amended--

(1) in section 1379 (as so designated by this Act)--

(A) by striking 'an enterprise' and inserting 'a regulated entity'; and

(B) by striking 'the enterprise' and inserting 'the regulated entity';

(2) in section 1379A (as so designated by this Act), by striking 'an enterprise' and inserting 'a regulated entity';

(3) in section 1379B(c) (as so designated by this Act), by striking 'enterprise' and inserting 'regulated entity'; and

(4) in section 1379D (as so designated by this Act), by striking 'enterprise' and inserting 'regulated entity'.

## **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

Section 1379 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4637), as so designated by this Act, is amended--

(1) by striking '2-year' and inserting '6-year'; and

(2) by inserting 'or an enterprise-affiliated party' after 'enterprise' each place that term appears.

### **Subtitle E--Other Reporting Regarding Regulated Entities**

## **SEC. 161. REPORTING REGARDING REGULATED ENTITIES.**

Part 3 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended--

(1) by striking sections 1351, 1352, and 1353 (Public Law 102-550; 106 Stat. 3969), except that no provisions of law amended by any such section repealed shall be affected by such repeal; and

(2) by striking sections 1354, 1355, and 1356 (12 U.S.C. 4601-3) and inserting the following:

**SEC. 1351. REPORTS REGARDING ISSUES AND ACTIVITIES OF REGULATED ENTITIES.**

(a) INSURED DEPOSITORY INSTITUTION HOLDINGS OF ENTERPRISE DEBT AND MORTGAGE-BACKED SECURITIES- Not later than 2 years after the date of enactment of the Federal Housing Enterprise Regulatory Reform Act of 2005, the Director, the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board shall jointly submit a report to the Congress regarding--

(1) the extent to which obligations issued or guaranteed by the regulated entities (including mortgage-backed securities) are held by federally insured depository institutions, including such extent by type of institution and such extent relative to the capital of the institution;

(2) the extent to which the unlimited holdings by federally insured depository institutions of the obligations of the enterprises could produce systemic risk issues, particularly for the safety and soundness of the banking system in the United States, in the event of default or failure by a regulated entity; and

(3) the effects on the enterprises, the banking industry, and mortgage markets, if prudent limits on the holdings of the obligations of a regulated entity were placed on federally insured depository institutions.

(b) PORTFOLIO OPERATIONS, RISK MANAGEMENT, AND MISSION-

(1) IN GENERAL- Not later than 2 years after the date of enactment of the Federal Housing Enterprise Regulatory Reform Act of 2005, the Director shall submit a report to the Congress--

(A) describing the holdings of the regulated entities in retained mortgages and repurchased mortgage-backed securities and the use of derivatives for hedging purposes;

(B) describing the extent of such holdings relative to other assets and the risk implications of such holdings;

(C) containing an analysis of such holdings for safety and soundness or mission compliance purposes; and

(D) containing an assessment of whether such holdings and other assets of the regulated entities fulfill the mission purposes of the regulated entities under the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, and the Federal Home Loan Bank Act.

`(2) CONSULTATION- The Director shall consult with the Comptroller General of the United States in preparing the report under this subsection and in conducting any research, analyses, and assessments for the report.

`(c) DEBT ISSUANCES- Not later than 2 years after the date of enactment of the Federal Housing Enterprise Regulatory Reform Act of 2005, the Director shall submit a report to Congress regarding--

`(1) the extent of outstanding obligations of the regulated entities and the rate of growth of such obligations; and

`(2) an analysis as to the appropriate level of debt issuances of a regulated entity to operate in a safe and sound manner, comply with its mission, and maintain a certain credit rating or debt rating.

`(d) RISK-BASED CAPITAL LEVELS-

`(1) IN GENERAL- The Director shall submit a report to the Congress, at the end of each fiscal quarter, regarding--

`(A) the risk-based capital levels for the enterprises under section 1361, including a description of the risk-based capital test under that section and any assumptions of the Director and factors used by the Director in establishing the test; and

`(B) the minimum and critical capital levels for the enterprises pursuant to sections 1362 and 1363, respectively.

`(2) TIMING- Each report under this subsection shall be submitted not later than 60 days after the end of each fiscal quarter.

`(e) RESOURCES AND ALLOCATIONS- The Comptroller General of the United States shall submit a report to Congress annually, on a fiscal year basis, regarding--

`(1) the allocation of resources of the Agency by the Director; and

`(2) the level of assessments collected by the Director for the operation of the Agency.

`(f) RECOMMENDATIONS- Each report submitted pursuant to this section shall include specific recommendations of appropriate policies, limitations, regulations, legislation, or other actions to deal appropriately and effectively with the issues addressed by such report.'.

#### **Subtitle F--General Provisions**

### **SEC. 171. CONFORMING AND TECHNICAL AMENDMENTS.**

(a) AMENDMENTS TO 1992 ACT- The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act, is amended--

(1) in section 1315 (12 U.S.C. 4515)--

(A) in subsection (a)–

(i) by striking `(a) OFFICE PERSONNEL- The' and inserting `(a) IN GENERAL- Subject to title III of the Federal Enterprise Regulatory Reform Act of 2005, the'; and

(ii) by striking `the Office' each place that term appears and inserting `the Agency';

(B) in subsection (c), by striking `the Office' and inserting `the Agency';

(C) in subsection (e), by striking `the Office' and inserting `the Agency';

(D) by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(E) by striking subsection (f);

(2) in section 1319A (12 U.S.C. 4520)–

(A) by striking `(a) IN GENERAL- '; and

(B) by striking subsection (b);

(3) in section 1364(c) (12 U.S.C. 4614(c)), by striking the last sentence;

(4) by striking section 1383 (12 U.S.C. 1451 note);

(5) in each of sections 1319D, 1319E, and 1319F (12 U.S.C. 4523, 4524, 4525) by striking `the Office' each place that term appears and inserting `the Agency'; and

(6) in each of sections 1319B and 1369(a)(3) (12 U.S.C. 4521, 4619(a)(3)), by striking `Committee on Banking, Finance and Urban Affairs' each place such term appears and inserting `Committee on Financial Services'.

(b) AMENDMENTS TO FANNIE MAE CHARTER ACT- The Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.) is amended–

(1) in each of sections 303(c)(2) (12 U.S.C. 1718(c)(2)), 309(d)(3)(B) (12 U.S.C. 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C. 1723a(k)(1)), by striking `Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development' each place that term appears, and inserting `Director of the Federal Housing Enterprise Regulatory Agency';

(2) in section 309–

(A) in subsection (m) (12 U.S.C. 1723a(m))–

(i) in paragraph (1), by striking `to the Secretary, in a form determined by the Secretary' and inserting `to the Director of the Federal Housing Enterprise Regulatory Agency, in a form determined by the Director'; and

(ii) in paragraph (2), by striking `to the Secretary, in a form determined by the Secretary' and inserting `to the Director of the Federal Housing Enterprise Regulatory Agency, in a form determined by the Director';

(B) in subsection (n) (12 U.S.C. 1723a(n))--

(i) in paragraph (1), by striking `and the Secretary' and inserting `and the Director of the Federal Housing Enterprise Regulatory Agency'; and

(ii) in paragraph (2), by striking `Secretary' each place that term appears and inserting `Director of the Federal Housing Enterprise Regulatory Agency'; and

(C) in paragraph (3)(B), by striking `Secretary' and inserting `Director of the Federal Housing Enterprise Regulatory Agency'.

(c) AMENDMENTS TO FREDDIE MAC ACT- The Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.) is amended--

(1) in each of sections 303(b)(2) (12 U.S.C. 1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and section 307(c)(1) (12 U.S.C. 1456(c)(1)), by striking `Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development' each place that term appears, and inserting `Director of the Federal Housing Enterprise Regulatory Agency';

(2) in section 306 (12 U.S.C. 1455)--

(A) in subsection (c)(2), by inserting `the' after `Secretary of';

(B) in subsection (i)--

(i) by striking `section 1316(c)' and inserting `section 306(c)'; and

(ii) by striking `section 106' and inserting `section 1316'; and

(C) in subsection (j), by striking `of substantially' and inserting `or substantially'; and

(3) in section 307 (12 U.S.C. 1456)--

(A) in subsection (e)--

(i) in paragraph (1), by striking `to the Secretary, in a form determined by the Secretary' and inserting `to the Director of the Federal Housing Enterprise Regulatory Agency, in a form determined by the Director'; and

(ii) in paragraph (2), by striking `to the Secretary, in a form determined by the Secretary' and inserting `to the Director of the Federal Housing Enterprise Regulatory Agency, in a form determined by the Director'; and

(B) in subsection (f)--

(i) in paragraph (1), by striking `and the Secretary' and inserting `and the

Director of the Federal Housing Enterprise Regulatory Agency';

(ii) in paragraph (2), by striking `the Secretary' each place that term appears and inserting `the Director of the Federal Housing Enterprise Regulatory Agency'; and

(iii) in paragraph (3)(B), by striking `Secretary' and inserting `Director of the Federal Housing Enterprise Regulatory Agency'.

(d) AMENDMENT TO TITLE 18, UNITED STATES CODE- Section 1905 of title 18, United States Code, is amended by striking `Office of Federal Housing Enterprise Oversight' and inserting `Federal Housing Enterprise Regulatory Agency'.

(e) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973- Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking `Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development' and inserting `Director of the Federal Housing Enterprise Regulatory Agency'.

(f) AMENDMENT TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT- Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(g) AMENDMENT TO TITLE 5, UNITED STATES CODE- Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

`Director of the Federal Housing Enterprise Regulatory Agency'.

## **SEC. 172. PRESIDENTIALLY APPOINTED DIRECTORS OF ENTERPRISES.**

(a) FANNIE MAE-

(1) IN GENERAL- Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended--

(A) in the first sentence, by striking `eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom' and inserting `13 persons, or such other number that the Director determines appropriate, who';

(B) in the second sentence, by striking `appointed by the President';

(C) in the third sentence--

(i) by striking `appointed or'; and

(ii) by striking `, except that any such appointed member may be removed from office by the President for good cause';

(D) in the fourth sentence, by striking `elective'; and

(E) by striking the fifth sentence.

(2) TRANSITIONAL PROVISION- The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under section 173 occurs.

(b) FREDDIE MAC-

(1) IN GENERAL- Section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended--

(A) in subparagraph (A)--

(i) in the first sentence, by striking `13 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom' and inserting `13 persons, or such other number as the Director determines appropriate, who'; and

(ii) in the second sentence, by striking `appointed by the President of the United States';

(B) in subparagraph (B)--

(i) by striking `such or'; and

(ii) by striking `, except that any appointed member may be removed from office by the President for good cause'; and

(C) in subparagraph (C)--

(i) by striking the first sentence; and

(ii) by striking `elective'.

(2) TRANSITIONAL PROVISION- The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under section 173 occurs.

## **SEC. 173. EFFECTIVE DATE.**

Except as specifically provided otherwise in this title, the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act.

## **TITLE II--FEDERAL HOME LOAN BANKS**

## **SEC. 201. DIRECTORS.**

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended--

(1) by striking subsection (a) and inserting the following:

^(a) NUMBER; APPOINTMENT AND ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST-

^(1) IN GENERAL- Subject to paragraphs (2) through (4), and except to the extent that action under section 1377 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 results in a lesser number, the management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate.

^(2) BOARD MAKEUP- The board of directors of each Bank shall be comprised of--

^(A) member directors, who shall comprise at least the majority of the members of the board of directors; and

^(B) nonmember directors, who shall comprise not fewer than 1/3 of the members of the board of directors.

^(3) SELECTION CRITERIA-

^(A) IN GENERAL- Each member of the board of directors shall be--

^(i) elected by majority vote of the members, in accordance with procedures established under this section; and

^(ii) a citizen of the United States.

^(B) NONMEMBER DIRECTOR CRITERIA-

^(i) PUBLIC INTEREST- Not fewer than 2 of the nonmember directors shall be selected from among representatives of organizations having more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

^(ii) CONFLICTS OF INTEREST- No nonmember director may, during the term of service on the board of directors, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.

^(4) DEFINITIONS- For purposes of this section, the following definitions shall apply:

^(A) MEMBER DIRECTOR- The terms 'member director' and 'member directorship' mean a member of the board of directors of a Federal Home Loan Bank who is an officer or director of a member bank that is located in the district in which the Federal Home Loan Bank is located.

^(B) NONMEMBER DIRECTOR- The terms 'nonmember director' and 'nonmember directorship' mean a member of the board of directors of a Federal Home Loan Bank who is a bona fide resident of the district in which the Federal Home Loan Bank is located.;

(2) by striking 'elective' each place that term appears and inserting 'member', other than in

subsections (d) and (f);

(3) in subsection (b)–

(A) in the first sentence, by striking `Each elective directorship' and inserting the following:

`(b) DIRECTORSHIPS-

`(1) MEMBER DIRECTORS- Each member director'; and

(B) by adding at the end the following:

`(2) NONMEMBER DIRECTORS- Each nonmember director shall be elected by the members entitled to vote, from among eligible persons nominated by the Board. Nominees shall meet all applicable requirements prescribed in this section. Procedures for nomination and election of nonmember directors shall be prescribed by the bylaws of each Federal Home Loan Bank, in a manner consistent with the rules and regulations of the Federal Housing Enterprise Agency.';

(4) in subsection (d)–

(A) in the first sentence–

(i) by striking `, whether elected or appointed,'; and

(ii) by striking `3 years' and inserting 4 years'; and

(B) in the second sentence–

(i) by striking `Federal Home Loan Bank System Modernization Act of 1999' and inserting `Federal Housing Enterprise Regulatory Reform Act of 2005';

(ii) by striking `1/3 ' and inserting `1/4 '; and

(iii) by striking `or appointed';

(5) in subsection (f)–

(A) by striking paragraph (2);

(B) by striking `appointed or' each place that term appears; and

(C) in paragraph (3)–

(i) by striking `(3) ELECTED BANK DIRECTORS- ' and inserting `ELECTION PROCESS- '; and

(ii) by striking `and such person shall not continue to act as a Bank director' and inserting `but such person may continue to act as a Bank director until his or her successor assumes the vacated office';

(6) in subsection (i)--

(A) in paragraph (1), by striking `Subject to paragraph (2), each' and inserting `Each'; and

(B) by striking paragraph (2); and

(7) by adding at the end the following:

`(I) TRANSITION RULE- Any member of the board of directors of a Bank elected in accordance with this section prior to the date of enactment of this subsection may continue to serve as a member of that board of directors for the remainder of the term of service, and until his or her successor assumes the vacated office.'.

## **SEC. 202. DEFINITIONS.**

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended--

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2) through (13) as paragraphs (1) through (12), respectively; and

(3) by adding at the end the following:

`(13) DIRECTOR- The term `Director' means the Director of the Federal Housing Enterprise Agency.

`(14) AGENCY- The term `Agency' means the Federal Housing Enterprises Supervisory Agency.'.

## **SEC. 203. AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.**

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Act, is amended--

(1) by striking sections 2A, 2B, and 20 (12 U.S.C. 1422a, 1422b, 1440);

(2) in section 18 (12 U.S.C. 1438), by striking subsection (b);

(3) by striking `the Board' each place that term appears, except in sections 15 and 25, and subsections (a), (b), and (c) of section 11, and inserting `the Director';

(4) by striking `The Board' each place that term appears and inserting `The Director';

(5) by striking `the Finance Board' each place that term appears and inserting `the Director';

(6) by striking `The Finance Board' each place that term appears and inserting `The Director';

(7) in section 6 (12 U.S.C. 1426(b)(1))--

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking `Finance Board approval' and inserting `approval by the Director'; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking `Finance Board regulations' each place that term appears and inserting `regulations of the Director';

(8) by striking `Federal Housing Finance Board' each place that term appears and inserting `Director';

(9) by striking `Federal Home Loan Bank Board' each place that term appears and inserting `Director';

(10) in section 10 (12 U.S.C. 1430)--

(A) in the heading for subsection (b), by striking `FORMAL BOARD RESOLUTION' and inserting `APPROVAL OF DIRECTOR'; and

(B) in subsection (b), by striking `by formal resolution'; and

(11) in section 21(b)(5) (12 U.S.C. 1441(b)(5)), by striking `Chairperson of the Federal Housing Finance Board' and inserting `Director'.

## **SEC. 204. DEBT ISSUING FACILITY.**

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended by inserting after section 11 the following:

### **`SEC. 11A. FEDERAL HOME LOAN BANK FINANCE CORPORATION.**

`(a) ESTABLISHMENT-

`(1) IN GENERAL- There is established the Federal Home Loan Bank Finance Corporation (in this section referred to as the `Corporation'), which shall be a jointly owned subsidiary of the Federal Home Loan Banks.

`(2) PURPOSES- The purposes of the Corporation are--

`(A) to issue and service the consolidated obligations of the Federal Home Loan Banks in accordance with this Act; and

`(B) to perform all other necessary and proper functions in relation to the issuance and service of such obligations, as fiscal agent on behalf of the Federal Home Loan Banks, and any other functions performed by the Office of Finance on behalf of the Financing Corporation (established under section 21) and the Resolution Funding Corporation (established under section 21B).

`(3) TRANSFER OF FUNCTIONS-

`(A) IN GENERAL- The functions of the Office of Finance of the Federal Home Loan Banks, shall be transferred to the Corporation immediately upon the conclusion of the organizational meeting of the board of directors (referred to in this subsection as the `effective time') established under subsection (c).

`(B) ORGANIZATIONAL MEETING- The organizational meeting of the board of directors of the Corporation shall occur as soon as practicable after the date of enactment of the Federal Enterprise Regulatory Reform Act of 2005.

`(C) INTERIM PROCEDURES- Until the effective time under subparagraph (A), the Office of Finance established as a joint office of the Federal Home Loan Banks (referred to in this subsection as the `predecessor office') shall continue to operate as if this section had not been enacted.

`(D) REFERENCES- After the effective time under subparagraph (A), any reference under any Federal law to the Office of Finance and the Managing Director of the Office of Finance shall be deemed to be references to the Corporation and the chief executive officer of the Corporation, respectively.

`(4) SUCCESSION-

`(i) ASSETS AND LIABILITIES- At the effective time, the Corporation shall, by operation of law and without any further action by the Federal Housing Finance Board, the predecessor office, or any court, succeed to the assets of, and assume all debts, obligations, contracts, and other liabilities of the predecessor office, matured or unmatured, accrued or absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor office.

`(ii) CONTRACTS- At the effective time, the existing contractual obligations of the Federal Housing Finance Board, solely in its capacity as issuer of consolidated obligations of the Federal Home Loan Banks and the predecessor office shall, by operation of law and without any further action by the Federal Housing Finance Board, the predecessor office, or any court, become obligations, entitlements, and instruments of the Corporation.

`(iii) TAXATION- The succession to assets, assumption of liabilities, conversion of obligations and instruments, and effectuation of any other transaction by the Corporation to carry out this subsection shall not be treated as a taxable event under the laws of any State, or any political subdivision thereof.

`(b) POWERS- Subject to the provisions of this Act, and such regulations as the Director may prescribe, the Corporation shall have the power--

`(1) to issue voting capital stock to the Federal Home Loan Banks;

`(2) to issue and service Federal Home Loan Bank consolidated notes, consolidated bonds, consolidated debentures and other consolidated obligations under section 11, on behalf of the Federal Home Loan Banks;

^(3) to determine the amount, maturities, rate of interest, terms, and other conditions of Federal Home Loan Bank consolidated obligations;

^(4) to adopt, alter, and use a corporate seal;

^(5) to make contracts;

^(6) to sue and be sued in the corporate capacity of the Corporation, and to complain and defend in any action brought by or against the Corporation in any court of competent jurisdiction;

^(7) to determine the terms and conditions under which the Corporation may indemnify its directors, officers, employees, and agents;

^(8) to determine and implement the methodology for assessments of the Federal Home Loan Banks to fund all of the expenses of the Corporation; and

^(9) to exercise such incidental powers not inconsistent with the provisions of this Act as are necessary or advisable to carry out the purposes of the Corporation.

^(c) BOARD OF DIRECTORS-

^(1) ESTABLISHMENT- The management of the Corporation shall be vested in a board of directors composed of the president of each of the Federal Home Loan Banks, ex officio.

^(2) DUTIES- The board of directors of the Corporation shall administer the affairs of the Corporation in accordance with the provisions of this section.

^(3) INTERIM APPOINTMENTS- If the office of the president of any Federal Home Loan Bank is vacant, the person serving in such capacity on an acting basis shall serve on the board of directors of the Corporation until replaced by the next person to fill the office of the president of that Federal Home Loan Bank.

^(4) POWERS- The board of directors of the Corporation shall exercise such powers as may be necessary or advisable to carry out this section, including the power to--

^(A) set policies for the management and operation of the Corporation;

^(B) approve a strategic business plan for the Corporation;

^(C) review, adopt and monitor annual operation and capital budgets of the Corporation;

^(D) constitute and perform the duties of an audit committee, which to the extent possible shall operate consistent with--

^(i) the requirements established for the Federal Home Loan Banks; and

^(ii) the requirements pertaining to audit committee reports set forth in the rules of Securities and Exchange Commission;

^(E) select, employ, determine the compensation for, and assign the duties and functions of the president of the Corporation, who shall—

^(i) be the chief executive officer for the Corporation and shall direct the implementation of the policies adopted by the board of directors of the Corporation;

^(ii) serve as a member of the Directorate of the Financing Corporation, under section 21(b)(1)(A) of this Act (12 U.S.C. 1441(b)(1)(A)); and

^(iii) serve as a member of the Directorate of the Resolution Funding Corporation, under section 21B(c)(1)(A) of this Act (12 U.S.C. 1441b(c)(1)(A));

^(F) provide for the review and approval of all contracts of the Corporation;

^(G) have the exclusive authority to employ and contract for the services of an independent, external auditor for the annual and quarterly combined financial statements of the Federal Home Loan Banks; and

^(H) select, evaluate, determine the compensation of, and, as appropriate, replace the internal auditor of the Corporation, who may be removed only by vote of the board of directors of the Corporation.

^(5) PAY- The members of the board of directors of the Corporation shall not receive compensation for their services as members of the board of directors.

^(6) QUORUM REQUIREMENT-

^(A) IN GENERAL- No business of the Corporation may be conducted by the board of directors unless a quorum of the members of the board of directors is present in person or by telephone, or through action taken by written consent executed by all of the members of the board of directors.

^(B) NUMBER- Directors representing a majority of the members of the board of directors shall constitute a quorum.

^(C) VOTE REQUIRED- Action taken by the board of directors shall be approved by a majority of the directors in attendance at any meeting at which a quorum is present, unless the board of directors adopts procedures requiring a greater voting requirement.

^(7) APPOINTMENT OF OFFICERS AND ADOPTION OF RULES OF PROCEDURE- The board of directors of the Corporation shall—

^(A) select, from among the members of such board, a Chairperson and a Vice Chairperson; and

^(B) adopt bylaws and other rules of procedure for actions before the board of directors, including the establishment of 1 or more committees to take action on behalf of the board of directors, and the delegation of powers of the board of directors

to any committee or officer of the Corporation.

^(d) STOCK-

^(1) ISSUANCE OF EQUAL AMOUNT TO EACH BANK- The Corporation shall issue to each Federal Home Loan Bank 1 share of voting capital stock, with a par value of \$100 per share.

^(2) RESTRICTED TRANSFERABILITY- Stock issued under paragraph (1) may be owned and held only by the Federal Home Loan Banks.

^(3) PAYMENT UPON ISSUANCE- Upon issuance of any share of stock under this subsection to any Federal Home Loan Bank, the bank shall pay to the Corporation the total amount due for such stock.

^(4) DISTRIBUTION REQUIREMENT-

^(A) IN GENERAL- The total amount of outstanding stock of the Corporation shall, at all times, be distributed equally among all of the Federal Home Loan Banks.

^(B) PROCEDURES- The board of directors of the Corporation shall adopt procedures to implement subparagraph (A).

^(e) STATUS- Except to the extent expressly provided in this title, or in rules or regulations promulgated by the Director, or unless the context clearly indicates otherwise, the Corporation shall be accorded the same status as a Federal Home Loan Bank for purposes of any other provision of law, including sections 2B and 13 of this Act.'

## **SEC. 205. EXCLUSION FROM CERTAIN SECURITIES REPORTING REQUIREMENTS.**

(a) IN GENERAL- The Federal Home Loan Banks shall be exempt from compliance with--

(1) sections 13(e), 14(a), 14(c), and 17A of the Securities Exchange Act of 1934, and related Commission regulations; and

(2) section 15 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to transactions in the capital stock of a Federal Home Loan Bank.

(b) MEMBER EXEMPTION- The members of the Federal Home Loan Bank System shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934, and related Commission regulations, with respect to ownership of or transactions in the capital stock of the Federal Home Loan Banks by such members.

(c) EXEMPTED AND GOVERNMENT SECURITIES-

(1) CAPITAL STOCK- The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are--

(A) 'exempted securities', within the meaning of section 3(a)(2) of the Securities Act of 1933; and

(B) `exempted securities', within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934.

(2) OTHER OBLIGATIONS- The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act are--

(A) `exempted securities', within the meaning of section 3(a)(2) of the Securities Act of 1933;

(B) `government securities', within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934; and

(E) `government securities' within the meaning of section 2(a)(16) of the Investment Company Act of 1940.

(3) BROKERS AND DEALERS- A person that effects transactions in the capital stock or other obligations of a Federal Home Loan Bank, for the account of others or for his own account, as applicable--

(A) is excluded from the definition of the term `government securities broker' under section 3(a)(43) of the Securities Exchange Act of 1934; and

(B) is excluded from the definition of `government securities dealer' under section 3(a)(44) of the Securities Exchange Act of 1934.

(d) EXEMPTION FROM REPORTING REQUIREMENTS- The Federal Home Loan Banks shall be exempt from periodic reporting requirements under the securities laws pertaining to--

(1) the disclosure of related party transactions that occur in the ordinary course of the business of the Banks with members; and

(2) the disclosure of the unregistered sales of equity securities.

(e) TENDER OFFERS- Commission rules relating to tender offers shall not apply in connection with transactions in the capital stock of the Federal Home Loan Banks.

(f) REGULATIONS-

(1) FINAL RULES- Not later than 1 year after the date of enactment of this Act, the Commission shall issue final rules to implement this section and the exemptions provided in this section.

(2) CONSIDERATIONS- In issuing final regulations under this section, the Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating the accounting treatment with respect to the payment to the Resolution Funding Corporation, the role of the combined financial statements of the Federal Home Loan Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Banks.

(g) APPLICABILITY- The exemptions and exclusions provided for in this section shall apply in

accordance with this section, notwithstanding any other provision of law, including any provision of the securities laws.

(h) DEFINITIONS- As used in this section--

(1) the terms `Bank', `Federal Home Loan Bank', `member', and `Federal Home Loan Bank System' have the same meanings as in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422);

(2) the term `Commission' means the Securities and Exchange Commission; and

(3) the term `securities laws' has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934.

## SEC. 206. LIMITATION ON GOLDEN PARACHUTES.

Section 7(i) of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended by adding at the end the following:

`(2) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO AFFILIATED PARTIES-

`(A) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS- The Agency may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

`(B) FACTORS TO BE TAKEN INTO ACCOUNT- The Agency shall prescribe, by regulation, the factors to be considered by the Agency in taking any action pursuant to subparagraph (A), which may include such factors as--

`(i) whether there is a reasonable basis to believe that the affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Bank that has had a material affect on the financial condition of the Bank;

`(ii) whether there is a reasonable basis to believe that the affiliated party is substantially responsible for the insolvency of the Bank, the appointment of a conservator or receiver for the Bank, or the troubled condition of the Bank (as defined in regulations prescribed by the Agency);

`(iii) whether there is a reasonable basis to believe that the affiliated party has materially violated any applicable Federal or State law or regulation that has had a material affect on the financial condition of the Bank;

`(iv) whether the affiliated party was in a position of managerial or fiduciary responsibility; and

`(v) the length of time the party was affiliated with the Bank, and the degree to which--

^(I) the payment reasonably reflects compensation earned over the period of employment; and

^(II) the compensation involved represents a reasonable payment for services rendered.

^(C) CERTAIN PAYMENTS PROHIBITED- No Bank may prepay the salary or any liability or legal expense of any affiliated party, if such payment is made--

^(i) in contemplation of the insolvency of such Bank, or after the commission of an act of insolvency; and

^(ii) with a view to, or has the result of--

^(I) preventing the proper application of the assets of the Bank to creditors; or

^(II) preferring one creditor over another.

^(D) GOLDEN PARACHUTE PAYMENT DEFINED-

^(i) IN GENERAL- For purposes of this paragraph, the term 'golden parachute payment' means any payment (or any agreement to make any payment) in the nature of compensation by any Bank for the benefit of any affiliated party, pursuant to an obligation of such Bank that--

^(I) is contingent on the termination of such party's affiliation with the Bank; and

^(II) is received on or after the date on which--

^(aa) the Bank becomes insolvent;

^(bb) any conservator or receiver is appointed for such institution; or

^(cc) the Agency determines that the Bank is in a troubled condition (as defined in the regulations prescribed by the Agency).

^(ii) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT- Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subclause (II) of clause (i) shall be treated as a golden parachute payment for purposes of this paragraph, if the payment was made in contemplation of the occurrence of an event described in any provision of such subclause.

^(iii) CERTAIN PAYMENTS NOT INCLUDED- For purposes of this paragraph, the term 'golden parachute payment' does not include--

^(I) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986, or other nondiscriminatory benefit plan;

`(II) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Agency determines, by regulation or order, to be permissible; or

`(III) any payment made by reason of the death or disability of an affiliated party.

`(E) OTHER DEFINITIONS- For purposes of this paragraph--

`(i) INDEMNIFICATION PAYMENT- Subject to subparagraph (F), the term `indemnification payment' means any payment (or any agreement to make any payment) by any Bank for the benefit of any person who is or was an affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Agency which results in a final order under which such person--

`(I) is assessed a civil money penalty;

`(II) is removed or prohibited from participating in conduct of the affairs of the Bank; or

`(III) is required to take any affirmative action described in section 2B(a)(5) with respect to such Bank.

`(ii) LIABILITY OR LEGAL EXPENSE- The term `liability or legal expense' means--

`(I) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

`(II) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

`(III) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

`(iii) PAYMENT- The term `payment' includes--

`(I) any direct or indirect transfer of any funds or any asset; and

`(II) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on--

`(aa) the determination, after such date, of the liability for the payment of such amount; or

`(bb) the liquidation, after such date, of the amount of such payment.

`(F) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT- No provision of this paragraph shall be construed as prohibiting

any Bank from purchasing any commercial insurance policy or fidelity bond, except that, subject to any affirmative action required under section 2B(a)(5), such insurance policy or bond shall not cover any legal or liability expense of the Bank which is described in subparagraph (E)(i).'

### **TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD**

#### **Subtitle A—OFHEO**

#### **SEC. 301. ABOLISHMENT OF OFHEO.**

(a) IN GENERAL- Effective at the end of the 180-day period beginning on the date of enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) DISPOSITION OF AFFAIRS- During the 180-day period beginning on the date of enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight, solely for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight—

(1) shall manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER- The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 303.

(d) USE OF PROPERTY AND SERVICES-

(1) PROPERTY- The Director of the Federal Housing Enterprise Regulatory Agency may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director of the Federal Housing Enterprise Regulatory Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any provision of law.

(2) AGENCY SERVICES- Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Enterprise Regulatory Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS-

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED- Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which--

(A) arises under title XIII of the Housing and Community Development Act of 1992, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the date of abolishment under subsection (a).

(2) CONTINUATION OF SUITS- No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Enterprise Regulatory Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Enterprise Regulatory Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

## SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL- All regulations, orders, and determinations described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Enterprise Regulatory Agency or the Secretary of Housing and Urban Development, as the case may be, until modified, terminated, set aside, or superseded in accordance with applicable law by such Director or Secretary, as the case may be, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY- A regulation, order, or determination is described under this subsection if they--

(1) were issued, made, prescribed, or allowed to become effective by--

(A) the Office of Federal Housing Enterprise Oversight;

(B) the Secretary of Housing and Urban Development and that relate to the Secretary's authority under--

(i) title XIII of the Housing and Community Development Act of 1992;

(ii) the Federal National Mortgage Association Charter Act, with respect to the Federal National Mortgage Association; or

(iii) the Federal Home Loan Mortgage Corporation Act, with respect to the

Federal Home Loan Mortgage Corporation; or

(C) a court of competent jurisdiction and that relate to functions transferred by this Act; and

(2) are in effect on the effective date of the abolishment under section 301(a).

### **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.**

(a) TRANSFER- Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Federal Housing Enterprise Regulatory Agency for employment not later than the effective date of the abolishment under section 301(a) and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS- Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES-

(1) IN GENERAL- In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER- The Director of the Federal Housing Enterprise Regulatory Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION- If the Director of the Federal Housing Enterprise Regulatory Agency determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 301(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS-

(1) IN GENERAL- Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Federal Housing Enterprise Regulatory Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Director of the Federal Housing Enterprise Regulatory Agency or the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, as applicable, including insurance,

to which such employee belongs on the date of the abolishment under section 301(a) if--

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Enterprise Regulatory Agency.

(2) COST DIFFERENTIAL- The difference in the costs between the benefits which would have been provided by the Office of Federal Housing Enterprise Oversight and those provided by this section shall be paid by the Director of the Federal Housing Enterprise Regulatory Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

## **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

Upon the effective date of its abolishment under section 301(a), all property of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development shall transfer to the Director of the Federal Housing Enterprise Regulatory Agency.

### **Subtitle B--Federal Housing Finance Board**

## **SEC. 311. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.**

(a) IN GENERAL- Effective at the end of the 1-year period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this title referred to as the `Board') is abolished.

(b) DISPOSITION OF AFFAIRS- During the 1-year period beginning on the date of enactment of this Act, the Board, solely for the purpose of winding up the affairs of the Board--

(1) shall manage the employees of such Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 403; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) STATUS OF EMPLOYEES BEFORE TRANSFER- The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of such Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 403.

(d) USE OF PROPERTY AND SERVICES-

(1) PROPERTY- The Director of the Federal Housing Enterprise Regulatory Agency may use the property of the Board to perform functions which have been transferred to the Director of the Federal Housing Enterprise Regulatory Agency for such time as is reasonable to

facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES- Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the 1-year period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Enterprise Regulatory Agency shall--

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS-

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED- Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which--

(A) arises under title XIII of the Housing and Community Development Act of 1992, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, the Federal Home Loan Bank Act, or any other provision of law applicable with respect to such Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS- No action or other proceeding commenced by or against the Board in connection with functions that are transferred to the Director of the Federal Housing Enterprise Regulatory Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Enterprise Regulatory Agency shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

## **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.**

(a) IN GENERAL- All regulations, orders, and determinations described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Enterprise Regulatory Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY- A regulation, order, or determination is described under this subsection if they--

(1) were issued, made, prescribed, or allowed to become effective by--

(A) the Board; or

(B) a court of competent jurisdiction and that relate to functions transferred by this Act; and

(2) are in effect on the effective date of the abolishment under section 401(a).

### **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.**

(a) **TRANSFER-** Each employee of the Board shall be transferred to the Federal Housing Enterprise Regulatory Agency for employment not later than the effective date of the abolishment under section 401(a), and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) **GUARANTEED POSITIONS-** Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) **APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES-**

(1) **IN GENERAL-** In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) **DECLINE OF TRANSFER-** The Director of the Federal Housing Enterprise Regulatory Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) **REORGANIZATION-** If the Director of the Federal Housing Enterprise Regulatory Agency determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 401(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) **EMPLOYEE BENEFIT PROGRAMS-**

(1) **IN GENERAL-** Any employee of the Board accepting employment with the Federal Housing Enterprise Regulatory Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Enterprise Regulatory Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 201(a) if--

(A) the employee does not elect to give up the benefit or membership in the program;  
and

(B) the benefit or program is continued by the Director of the Federal Housing Enterprise Regulatory Agency.

(2) COST DIFFERENTIAL- The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director of the Federal Housing Enterprise Regulatory Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after the date of such election or notice, without regard to any other regularly scheduled open season.

### **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

Upon the effective date of the abolishment under section 401(a), all property of the Board shall transfer to the Director of the Federal Housing Enterprise Regulatory Agency.

## **TITLE IV—MISCELLANEOUS PROVISIONS**

### **SEC. 401. STUDY AND REPORT ON BASEL II AND ENTERPRISE DEBT.**

(a) STUDY- The Board of Governors of the Federal Reserve System shall conduct a study the effects of the new Basel Capital Accord (Basel II), as endorsed by the Group of Ten countries in 'International Convergence of Capital Measurement and Capital Standards: a Revised Framework' on the regulated entities, as defined under this Act. The study shall examine the debt of the regulated entities and the capital classification on financial institutions that hold such debt.

(b) REPORT- The Chairman of the Board of Governors of the Federal Reserve System shall submit a report to Congress on the results of the study required by this section 2 years after the date of enactment of this Act.

### **SEC. 402. AFFORDABLE HOUSING REPORTING.**

The Inspector General of the Federal Housing Enterprise Regulatory Agency shall conduct an annual audit of the affordable housing activities of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, programs, and partnerships to ensure that such activities, programs, and partnerships support the affordable housing mission of those enterprises.

*END*